

1 SEN. FRASER: -- "votes to steal the
2 election in a democratic primary in Dallas, Texas,"
3 and he brought that forward. And you're one of the
4 persons that voted for that --

5 SEN. ELLIS: That's correct.

6 SEN. FRASER: -- bill, as I did --

7 SEN. ELLIS: Senator, you --

8 SEN. FRASER: -- to address voter fraud.

9 SEN. ELLIS: Are you aware of how a
10 puzzle works?

11 SEN. FRASER: I'm sorry?

12 SEN. ELLIS: Are you aware of how a
13 puzzle works, a puzzle, p-u-z-z-l-e, puzzle?

14 SEN. FRASER: Puzzle?

15 SEN. ELLIS: Yes.

16 SEN. FRASER: Well, if you're asking,
17 maybe I don't.

18 SEN. ELLIS: If you take a certain piece
19 of what someone has said out of context, Senator, what
20 you're doing is distorting what they intended to say.
21 So here is my point: Your bill does not touch mail-in
22 ballots. You used a quote by Steve Wolens to try and
23 augment your position. Your bill does not touch
24 mail-in ballots. Most of the cases of fraud that your
25 witnesses are going to talk about are going to involve

1 mail-in ballots, but this bill does not do anything to
2 touch that.

3 SEN. FRASER: Again, you're being
4 subjective. Let's wait for the objective testimony of
5 the witnesses. You're being a good lawyer and
6 projecting what the witnesses might say. And I would
7 suggest probably the thing we should do is listen to
8 the testimony that's given, and you will have the
9 right to question them. But I think the witnesses are
10 going to make a very clear case that we've got a huge
11 problem in Texas. There's a huge gap in Texas law.
12 There's every possibility for someone to walk in and
13 vote -- Craig Estes could take your voter ID and
14 register himself in Houston in a ballot box that they
15 don't, you know, know him. And he could register as
16 Rodney Ellis and he could vote for Rodney Ellis. That
17 could happen if, you know --

18 SEN. ELLIS: Senator, in your mind, just
19 based on your best guess, do you think that this bill
20 would have a more positive impact on one party or the
21 other in terms of Democrats or Republicans?

22 SEN. FRASER: I'm not going to project
23 about who might benefit from the passage of this. But
24 I wish you would listen to the results in Georgia and
25 Indiana. And I don't want to put words in their

1 mouth, but I've seen the numbers. The ones in Georgia
2 and the ones in Indiana, the increase, the greatest
3 increase came in Democratic votes, it came in
4 minorities. And I hope -- in Texas my hope would be,
5 I want African-American votes to increase in Texas.
6 That's my goal. And if I can create something for
7 your voters --

8 SEN. ELLIS: This bill is going to
9 increase the number of African-Americans and Hispanics
10 that vote in Texas?

11 SEN. FRASER: Absolutely.

12 SEN. ELLIS: That's what you believe?

13 SEN. FRASER: I do believe that; yes, I
14 do.

15 SEN. ELLIS: You made reference to the
16 last election in terms of the turnout increasing. Do
17 you think that that record increase had anything to do
18 with Barack Obama being the Democratic nominee and
19 Sen. McCain, John McCain being the Republican nominee?

20 SEN. FRASER: Let me ask you this a
21 different way. Did Barack Obama run in Illinois and
22 Indiana both? Did he run in both states?

23 SEN. ELLIS: Senator --

24 SEN. FRASER: Was he from -- since you
25 asked me the question, I get to answer.

1 SEN. ELLIS: I can --

2 SEN. FRASER: You said was the --

3 SEN. ELLIS: I can assure you the people
4 in Illinois knew Barack Obama was going to win the
5 State of Illinois. I can assure you that.

6 SEN. FRASER: You're saying they didn't
7 feel comfortable voting for him because they knew him?

8 SEN. ELLIS: No, I'm not saying that at
9 all. Let you ask you this: Do you know what the
10 increase in vote was in Texas?

11 SEN. FRASER: All the questions you're
12 covering is the same thing that was asked about the
13 last four -- you're the fifth person.

14 SEN. ELLIS: 600,000 additional votes.

15 SEN. FRASER: We're going to have
16 witnesses from Indiana and Georgia --

17 SEN. DUNCAN: Senators, you're taking
18 over each other and the court reporter only has two
19 hands.

20 SEN. ELLIS: Okay. You all right?

21 SEN. FRASER: I'm going to vacate the
22 premise so you can talk.

23 SEN. ELLIS: I think I've completed my
24 questions. I think I've made the point. I would like
25 to ask the author of the bill about a historic bill

1 that he's carrying that in my judgment would
2 negatively impact minority voters in Texas.

3 SEN. FRASER: As you know, the way this
4 system works, we have witnesses come in, they tell
5 their story, you get to ask them questions. When
6 that's over, I'll close, we'll have a vote. It will
7 come to the floor. If I'm successful, once we get on
8 the floor and I lay it out, we get to do this again.
9 And I would suspect at some point you and I will have
10 a discussion. But I would like for you to ask the
11 questions of the expert witnesses, because I think
12 you're going to be shocked at what they say about what
13 the impact would be on minority voting in both those
14 states, what happened and how it would be increased.

15 SEN. ELLIS: All right. Thank you.

16 SEN. DUNCAN: Sen. Davis?

17 SEN. DAVIS: Sen. Fraser --

18 SEN. FRASER: You didn't get the rule
19 about freshmen?

20 SEN. DAVIS: No. I'm sorry. I didn't
21 get that rule.

22 (Laughter)

23 SEN. FRASER: I'll be glad to accept
24 your questions.

25 SEN. DAVIS: Thank you.

1 Would you agree that the provisions of
2 the Carter-Baker comprehensive proposal are proposals
3 that you are using in support for the legislation that
4 you have introduced on this issue?

5 SEN. FRASER: Senator, I took the
6 information that I read -- I read the report; I read
7 what they included in print; I read their press
8 release -- I took my highlighter and highlighted
9 things that came from either what they had written
10 down and they put their name on, and I repeated and
11 read. I didn't project what I thought Jimmy Carter
12 was thinking or what Jim Baker was thinking. I read
13 what they put in print in that, and that's what I did
14 today. There is going to be someone here hopefully,
15 if we ever get to that point, from that Commission
16 that you can ask that exact question.

17 SEN. DAVIS: You made a statement a
18 moment ago that in this legislation that you have
19 proposed, you are addressing the recommendations of
20 the Carter-Baker Report for voter ID, did you not?

21 SEN. FRASER: Say that again.

22 SEN. DAVIS: You made a statement
23 previously, when you were speaking with Sen. Ellis,
24 that you are addressing the recommendations of the
25 carter-Baker Report for purposes of proposing your

1 voter ID bill?

2 SEN. FRASER: I am proposing a voter ID
3 law and laying it out. I used as a reference a
4 document that is in the public spectrum, something
5 that I've pulled off -- I think off the Internet, of
6 that report. I highlighted a statement that was made,
7 and I read that statement.

8 SEN. DAVIS: And you mentioned that you
9 highlighted not only that report but you also
10 highlighted the editorial of February 3, 2008, titled
11 "A Clearer Picture on Voter ID." Correct?

12 SEN. FRASER: What was the last part of
13 that? But what?

14 SEN. DAVIS: You mentioned a moment ago,
15 when you had your highlighter out, you went through
16 the report, the Baker-Carter Report. You also went
17 through an editorial that was written by both of them
18 in February of 2008, and you also made highlights to
19 that editorial?

20 SEN. FRASER: I highlighted a lot.

21 SEN. DAVIS: But you highlighted those?

22 SEN. FRASER: Well, I can get my book
23 out and I can show you what I highlighted, yes.

24 SEN. DAVIS: I'm curious as to whether,
25 when you had your highlighter out, you highlighted

1 this particular statement that was made in their
2 editorial, that the groups least likely to have valid
3 photo IDs are women, African-Americans and Democrats.
4 Did you highlight that statement?

5 SEN. FRASER: I am not advised. I'm
6 sorry. I don't have that. I did not say that. Did
7 you hear me say that?

8 SEN. DAVIS: No. I'm asking you whether
9 you highlighted that.

10 SEN. FRASER: I'm not --

11 SEN. DAVIS: Do you remember reading
12 that?

13 SEN. FRASER: I'm sorry?

14 SEN. DAVIS: Do you recall reading that
15 from their editorial, that the groups least likely to
16 have valid photo IDs are women, African-Americans and
17 Democrats?

18 SEN. FRASER: The answer is yes. And
19 again, it's the question that Sen. Ellis just asked,
20 is that it was included in the paragraph above and
21 below. But I think I do remember seeing that in that
22 editorial.

23 SEN. DAVIS: Do you recall also seeing
24 their statement that the current crop of laws,
25 including those that we've been discussing today --

1 SEN. FRASER: Senator, I'm sorry. You
2 know I have a hearing problem, and I'm only getting
3 about half of what you're saying. So if you can --

4 SEN. DAVIS: I'm sorry. I will speak
5 up.

6 SEN. FRASER: I have trouble -- I'm
7 sorry -- sometimes with women's voices, and I'm just
8 not getting it.

9 SEN. DAVIS: I will speak up.

10 Do you call reading in that editorial
11 that they also stated that the current crop of laws
12 are not being phased in gradually and in a fair manner
13 that would increase rather than decrease voter
14 participation?

15 SEN. FRASER: I'm not getting it. I'm
16 sorry.

17 SEN. ELLIS: I thought I heard my wife's
18 voice. Was she calling me?

19 SEN. FRASER: My wife says this is a
20 trained response.

21 SEN. DAVIS: Would you like me to repeat
22 my last question?

23 SEN. FRASER: Please.

24 SEN. DAVIS: Do you recall reading in
25 the editorial a statement made by Secretary Baker and

1 former President Carter that the current crop of laws
2 that are being put in place by states are not being
3 phased in gradually and in a fair manner that would
4 increase not reduce voter participation?

5 SEN. FRASER: No, I do not remember
6 seeing that.

7 SEN. DAVIS: You also stated that you
8 read the report and that you highlighted particular
9 provisions of that report in formulating your bill
10 that you have proposed today and your reasons for
11 supporting that bill.

12 SEN. FRASER: I don't think I said that
13 at all. I didn't read that report in formulating my
14 bill. The bill that I laid out is very, very
15 straightforward. All it says is that when Wendy Davis
16 goes to vote, they want to know -- they want to see
17 your picture ID or other forms of identification to
18 verify that you are who you say you are and that --
19 it's not rocket science.

20 SEN. DAVIS: When you began your
21 comments on the floor today in laying out your bill,
22 you quoted from the Carter-Baker Report as well as
23 from the editorial that I read from a moment ago. In
24 answering Sen. Ellis' questions, you said you were
25 addressing the recommendations of the Carter-Baker

1 Report in implementing your proposal for voter ID.

2 SEN. FRASER: I don't think I said that.
3 I said -- I think I referenced things that were said
4 in that report. I referenced the Supreme Court
5 Justice, John Paul Stevens, again a left-leaning
6 Supreme Court Justice that wrote the majority report
7 that validated the Virginia -- or the Indiana law that
8 put in place a strict photo ID. I referenced that
9 that had been done, their comments. I referenced the
10 Commission, things that they had said. I referenced
11 the bill that was proposed by Rep. Steve Wolens, a
12 Democrat in Dallas near your area that was -- or may
13 be in your district, where he suggested that with vote
14 harvesting and voter fraud, those are all stories that
15 were -- that I had data on.

16 SEN. DAVIS: In referencing the
17 Carter-Baker Report, I wonder if you came across this
18 statement by them: "To prevent the ID from being a
19 barrier to voting, we recommend that states use the
20 registration and ID process to enfranchise more voters
21 than ever." Do you recall that?

22 SEN. FRASER: Why don't you ask that
23 question of the expert witness that I have informed
24 the last five Senators that are coming up, that I
25 don't have any idea what she is going to say. She is

1 going to be under oath, and she would love to answer
2 your questions that you're asking, and I think that is
3 where we should go from here.

4 SEN. DAVIS: Well, for purposes of
5 discussion or furthering our discussion and my
6 questions for you, let me read some of the
7 recommendations that Carter-Baker report made.

8 SEN. FRASER: Are you going to ask me
9 questions --

10 SEN. DAVIS: I'm going to ask you
11 questions.

12 SEN. FRASER: -- or are you going to --
13 you have the right at any time to put stuff on the
14 record. But you --

15 SEN. DAVIS: I'm going to ask you
16 questions.

17 SEN. FRASER: -- had asked the Chairman
18 if you could ask me questions.

19 SEN. DAVIS: I'm going to ask you
20 questions.

21 SEN. FRASER: Thank you.

22 SEN. DAVIS: "States should play an
23 affirmative role in reaching out to non-drivers by
24 providing more offices . . ." That's one of the
25 recommendations in this report. Does the bill that

1 you have placed in front of us today on voter ID have
2 an affirmative role for states in recommending that
3 they reach out to non-drivers by providing more
4 offices?

5 SEN. FRASER: I'm sorry. I'm not even
6 getting close to following the question you're asking.
7 The bill that I'm laying out today says that when
8 Wendy Davis walks into the voting booth, you've got to
9 prove that you're really Wendy Davis. It's that
10 simple.

11 SEN. DAVIS: And the bill does not
12 include a request of the state that it open more
13 offices for the purposes of obtaining a photo ID for
14 non-drivers, it does not include that proposal.
15 Correct?

16 SEN. FRASER: They can use non-photos.
17 I mean, there is no provision right now, there is
18 nothing in the bill that every person in the state
19 could not comply with, because you can use a piece of
20 mail that had been mailed to you, your library card.
21 There's a long, long list of things that you could
22 use. You could even use as your piece of
23 identification the mail that the registrar sent to you
24 for your voter registration. That's a form of
25 identification.

1 SEN. DAVIS: And I'm going to ask you
2 about that list in a moment. Let me ask you another
3 question about what your bill includes. Does your
4 bill include a proposal that the state should create
5 mobile offices for the purpose of reaching out to
6 persons without photo ID, to create those photo IDs?

7 SEN. FRASER: Would you ask that
8 question again, please?

9 SEN. DAVIS: Yes. Does the bill that
10 you're proposing include a request of the state that
11 they create mobile offices that would go out into the
12 communities for purposes of helping voters obtain
13 photo IDs?

14 SEN. FRASER: Were you here earlier when
15 that question was asked by another senator?

16 SEN. DAVIS: I do not recall that
17 question being asked. I would appreciate it if you
18 would answer it.

19 SEN. FRASER: The Secretary of State has
20 been asked to come here. The Secretary of State will
21 implement this transaction. The wording of the bill
22 that is in the bill is very clear of what we would ask
23 them to do. The implementation of that would be, you
24 can ask the Secretary of State, please.

25 SEN. DAVIS: Okay. But I'm asking you

1 if your bill includes that proposal?

2 SEN. FRASER: My bill has language that
3 clarifies that there will be an education program of
4 the people to implement this bill. It lays out the
5 instructions on that, but it will leave it to the
6 Secretary of State to implement.

7 SEN. DAVIS: Does your bill contain a
8 proposal that would provide the ability for voters to
9 register and to provide photo IDs to those voters free
10 of charge?

11 SEN. FRASER: Try it again. I didn't
12 get it.

13 SEN. DAVIS: Does your bill include a
14 proposal that would allow voters to register and be
15 provided photo IDs free of charge?

16 SEN. FRASER: The photo ID is free of
17 charge.

18 SEN. DAVIS: It is free of charge?

19 SEN. FRASER: Yes.

20 SEN. DAVIS: Who is going to pay for
21 that?

22 SEN. FRASER: We are advised that --
23 first of all, that there are very few people that
24 would need that, is that the bulk of the population of
25 Texas already has a driver's license or a photo ID.

1 And we're advised that, you know, the cost of that
2 would be implemented through -- I guess it's DPS. So
3 it is built into the budget.

4 You know, I know you're new to the
5 Legislature. But the fiscal impact on the bill, that
6 is determined if there is a cost to the state. And
7 they said there is no impact, because it could be
8 absorbed in current budget.

9 SEN. DAVIS: Believe it or not, I
10 understand that fiscal impact is based on whether
11 there is a cost to the state. What I'm asking you is
12 if your bill proposes free voter ID cards that could
13 be made to anyone who requests them and whether there
14 has been a cost put to that proposal?

15 SEN. FRASER: I'm sorry. I'm getting
16 members, people talking to me. Try it again, please.
17 I can't hear you.

18 SEN. DAVIS: I'm asking you, in your
19 bill, the bill that you've authored, the bill that
20 you've laid out, the bill that you are standing in
21 front of us defending today, is there a proposal in
22 your bill that anyone who wishes to register to vote
23 would be provided a voter ID card free of charge?

24 SEN. FRASER: The answer is yes, that
25 anyone that is a registered voter will be given a

1 photo ID free of charge. So I think the answer to
2 your question is yes.

3 SEN. DAVIS: And yet, do you have any
4 idea how many people might come forward and request a
5 free voter ID?

6 SEN. FRASER: I would suggest you ask
7 the Secretary of State that.

8 SEN. DAVIS: I will. But I'm asking
9 you, because it's your bill. I'm asking you. Do you
10 have any idea?

11 SEN. FRASER: And I'm responding to you
12 that I'm going to punt to the Secretary of State
13 because they're the ones that keep that data.

14 SEN. DAVIS: Was that question asked of
15 you by the LBB when they were preparing the fiscal
16 note for your bill?

17 SEN. FRASER: We didn't talk to LBB.
18 That's not the process.

19 SEN. DAVIS: Okay. Turning to Section
20 63.0101, Sections (a) and Sections (b) of your bill,
21 would you agree that this list of proof of
22 identification that can be provided to a poll worker
23 includes a multiple of standards that those poll
24 workers could apply?

25 SEN. FRASER: Do I agree that there's a

1 lot of choices?

2 SEN. DAVIS: Yes, a multiplicity of
3 standards --

4 SEN. FRASER: A multitude of choices.
5 That I think is one of the beauties of the bill, is
6 that there's a lot of ways that people could identify
7 themselves.

8 SEN. DAVIS: Okay. In reading the
9 Carter-Baker proposal, was it your understanding that
10 the proposal they advanced was the creation of a
11 universal voter ID that would, No. 1, provide more
12 offices for people to receive those IDs, including
13 mobile ones; No. 2, that would allow the registration
14 and free federal ID for anyone wishing to seek one;
15 and that there would be much less discrimination
16 against minorities if there were a single uniform ID
17 rather than poll workers applying multiple standards?

18 SEN. FRASER: I'm not advised. I can't
19 speak for the commission. We have an expert witness
20 who will be here in a minute, and I will be glad for
21 you to ask her.

22 SEN. DAVIS: Would you agree that if
23 those proposals were put in place, that it would
24 create costs in implementing such a system?

25 SEN. FRASER: Again, Senator, we have a

1 system here where they look at the bill, any potential
2 cost to the state. They come back with the fiscal
3 impact on that. And the statement we received back
4 from, you know, on the fiscal impact was no impact.

5 SEN. DAVIS: Thank you. I'm going to
6 complete my questions for now in order to give the
7 court reporter a break. Thank you, Sen. Fraser.

8 SEN. FRASER: Thank you.

9 SEN. SHAPLEIGH: I've got three
10 exhibits.

11 SEN. DUNCAN: Members, we have several
12 folks who want to talk. And we've been going now for
13 about an hour and 45 minutes, and I want to try to
14 pace the court reporter. Before we go to a short
15 break, though, Sen. Shapleigh had some exhibits he
16 wanted to introduce. So we'll do that and then take
17 a -- we'll be at ease for a few minutes.

18 Sen. Shapleigh.

19 SEN. SHAPLEIGH: Thank you, Mr. Chair.

20 If I could, as Exhibits 11, 12 and 13,
21 respectively, the copy of The New York Times op ed by
22 Baker and Carter, '05; copy of Royal Masset's quote;
23 and editorial from the quorum report and The New York
24 Times' editorial of '08, all discussed on the floor.

25 SEN. DUNCAN: Okay. They will be placed

1 in the record.

2 Members, have those copies been provided
3 to the Secretary?

4 They're on their way? Okay. Thank you.

5 Members, we will take a -- we'll stand
6 at ease for approximately 10 minutes. We'll reconvene
7 at 4:45.

8 (Exhibit Nos. 11, 12 and 13 marked and
9 admitted)

10 (Recess: 4:36 p.m. to 4:51 p.m.)

11 SEN. DUNCAN: The Senate Committee of
12 the Whole will come to order.

13 If those in the gallery could be seated
14 and we could have order in the chamber.

15 Sen. West.

16 SEN. WEST: Thank you very much,
17 Mr. Chairman.

18 Sen. Fraser, I'm going to try not to be
19 repetitious. Can you hear me now?

20 SEN. FRASER: If you use the Barry White
21 voice, I think we're okay.

22 SEN. WEST: The Barry White voice.

23 SEN. FRASER: You know, I've told you
24 that before --

25 SEN. WEST: All right.

1 SEN. FRASER: -- that that's your best
2 Barry White voice.

3 SEN. WEST: Well, I --

4 SEN. FRASER: I've got your vote. I can
5 hear you well.

6 SEN. WEST: Barry was able to -- has
7 been very convincing at times. Can I convince you to
8 pull this bill down?

9 SEN. FRASER: Now yet.

10 SEN. WEST: Oh, okay. All right. I
11 want to go through the bill with you. On Page 3 of
12 the bill, Line 1 --

13 SEN. FRASER: If you would hold one
14 second so I can get a copy of it.

15 SEN. WEST: Sure.

16 SEN. FRASER: You're reading from what?

17 SEN. WEST: Page 3, Lines 1 through 4.

18 SEN. FRASER: I'm not sure ours is going
19 to match up, but we'll try. Page 3 -- where are you
20 referencing? Okay. There we go. Okay. That's what
21 I needed. This is what we're used to.

22 SEN. WEST: Okay. We talked about the
23 use of identification.

24 SEN. FRASER: Yes, sir.

25 SEN. WEST: If you're going under

1 Subdivision (1), you say, "one form of identification
2 listed in 63.0101(a)," and if you're going to go under
3 No. (2), you say two forms of identification under
4 63.0101(b). And I'm trying to -- why the difference
5 between the two types of identification in terms of
6 the number that you have to use for purposes of
7 identification?

8 SEN. FRASER: Well, I think the easy
9 explanation is that I think you know, under the
10 Indiana and the Georgia laws, they have a strict photo
11 ID. Obviously, my preference on this would be a
12 strict photo ID.

13 In the language that came from the bill
14 that came over from the House, they offered an
15 exception with two other forms of ID. But since
16 they're not a photo, where you could identify someone,
17 I can't speak for the House, but I'm assuming that
18 option was given so you would have two different ways
19 to identify someone to verify for sure that that's who
20 they were.

21 SEN. WEST: So the only reason the
22 requirement for two different forms is in this bill is
23 because that's the way it came over from the House?

24 SEN. FRASER: The bill was passed in the
25 House in this form and came over. And because it had

1 already passed one body in that form, and we had not
2 voted on it, we made the decision to pick up the bill
3 that came over last year from the House.

4 SEN. WEST: And that's the sole reason.
5 Is that correct?

6 SEN. FRASER: No.

7 SEN. WEST: What was the other reason?

8 SEN. FRASER: The other reason is, is we
9 think this is a very fair -- you know, it's a very
10 fair way, is that -- you know, I would love to see a
11 strict photo ID bill like Indiana and Georgia. But
12 the bill that we're laying out gives a second
13 opportunity for someone to identify themselves, which
14 would be a secondary form of identification.

15 SEN. WEST: Okay. But again, the reason
16 that it's in there is because it came over from the
17 House that way and some other reasons. And I'm trying
18 to figure out what are all the reasons that you put
19 the requirement for two forms in there, other than it
20 came over from the House that way?

21 SEN. FRASER: Again, the goal of my bill
22 is that I don't want somebody to go into the polling
23 place saying they're Royce West and use your voter ID.
24 I think if you had a photo ID -- both of us are big
25 people -- and if we came in, it would be easy for

1 someone to identify our features, that we are who we
2 say we are.

3 SEN. WEST: Yes.

4 SEN. FRASER: But if you don't have some
5 form of identification, then there is every ability
6 for someone to steal your voter registration --

7 SEN. WEST: Okay.

8 SEN. FRASER: -- and go and vote in
9 person, representing themselves to be Royce West.

10 SEN. WEST: Okay. Let's look at this
11 right here. So your Section (a) specifically deals
12 with, under that -- I'm sorry.

13 SEN. FRASER: (a)?

14 SEN. WEST: Section (a) under 63.0101 --

15 SEN. FRASER: Where are you? What page?

16 SEN. WEST: I'm actually on Page 5 now.

17 SEN. FRASER: Okay. Page 5. Which
18 line?

19 SEN. WEST: Well, this whole section,
20 starting from I guess 9 -- and Section 10 of the bill.

21 SEN. FRASER: Got it.

22 SEN. WEST: Everything in there deals
23 with some sort of photo identification. Right?

24 SEN. FRASER: Yes, that's correct.

25 SEN. WEST: And everything in Section

1 (b) deals with some documentary identification?

2 SEN. FRASER: I do believe you're --

3 SEN. WEST: Section (b) is on .

4 SEN. FRASER: All of (a) is photo and
5 everything else is an alternate form of
6 identification.

7 SEN. WEST: Okay. Now, as it relates to
8 section; I'm still on Page 5 and 6. As it relates to
9 the forms of identification that you have amended into
10 the bill, did you make any --

11 SEN. FRASER: Well, I haven't amended
12 anything into the bill.

13 SEN. WEST: Well, I'm sorry. Drafted.
14 Drafted.

15 SEN. FRASER: The bill was filed.

16 SEN. WEST: Okay. As filed in this
17 bill. Did you make any determination as to how it
18 would impact ethnic minorities in the State of Texas?
19 And, if so, what did you do to make a determination as
20 to the impact?

21 SEN. FRASER: The answer I'm going to
22 give you is the same answer I've given now to the last
23 six witnesses, is that the way we help determine that
24 was what happened in Indiana and what happened in
25 Georgia. I have invited one person from Indiana and

1 two persons from Georgia. The persons from Georgia
2 are a Section 5 voter rights state.

3 And I think those would be very good
4 questions to ask them, that if we implement a voter
5 identification bill, how did it impact their voters?
6 And I think they're going to tell you that their voter
7 response went up because those people felt very, very
8 good -- just a second. You're about to interrupt me.
9 They felt very good that -- they felt before --
10 weren't comfortable because they were afraid their
11 vote was going to be stolen. But after we implement
12 the voter identification, they felt good about it.
13 And voter results for all classes, but more especially
14 for African-Americans and Hispanics, increased. And I
15 believe that's what they're going to tell you. I
16 don't want to speak for them.

17 SEN. WEST: Okay. And so then we should
18 extrapolate from their testimony that the experiences
19 in a Section 5 state -- Georgia -- and a non-Section 5
20 state would be applicable to the State of Texas?

21 SEN. FRASER: Senator, my wishes on this
22 and my goal, if I could project the absolute best
23 thing that could happen, is that the people of Oak
24 Cliff that are in your area representing --

25 SEN. WEST: By the way, have you talked

1 with any people in Oak Cliff about this bill?

2 SEN. FRASER: That we would have record
3 turnout by the people in Oak Cliff --

4 SEN. WEST: Have you talked to any of
5 the minorities -- I'm sorry.

6 SEN. FRASER: Have I talked to any?

7 SEN. WEST: Have you talked to any
8 ethnic minorities about this particular bill? Have
9 they had input into this bill at all?

10 SEN. FRASER: And I don't want to get
11 cute with you, but you are an ethnic minority, and you
12 and I have had a conversation about it.

13 SEN. WEST: Oh, no. I'm talking
14 about --

15 SEN. FRASER: So the answer to that
16 would have to be yes.

17 SEN. WEST: Okay. Well, let me be more
18 specific then. Have you talked to any ethnic
19 minorities that support your bill?

20 SEN. FRASER: The answer is yes.

21 SEN. WEST: All right. Are they
22 Hispanics and African-Americans?

23 SEN. FRASER: Yes.

24 SEN. WEST: Was it an African-American
25 that supports your bill?

1 SEN. FRASER: What did you say?

2 SEN. WEST: All right. I'm going to be
3 more specific now. Have you talked to an African-
4 American, African-Americans that support your bill?

5 SEN. FRASER: Yes.

6 SEN. WEST: Okay. Have you talked to
7 Hispanics that support your bill?

8 SEN. FRASER: Yes.

9 SEN. WEST: Are they here to testify in
10 support of your bill?

11 SEN. FRASER: Let me think about -- the
12 invited testimony --

13 SEN. WEST: Yes.

14 SEN. FRASER: -- of the invited
15 testimony, we have an African-American, I think, that
16 is going to testify on this bill.

17 SEN. WEST: Is that African-American
18 with the Secretary of State's office?

19 SEN. FRASER: Yes, he is.

20 SEN. WEST: He is a resource, isn't he?
21 He's not coming to testify --

22 SEN. FRASER: Did I say that -- I didn't
23 say he was going to testify. I said he was going to
24 testify on the bill.

25 SEN. WEST: All right. Now, let me go

1 back to my question. Maybe it wasn't specific enough.
2 Have you talked to any African-Americans or Hispanics
3 that are in support of your bill --

4 SEN. FRASER: Yes.

5 SEN. WEST: -- support? And will they
6 be here to testify?

7 SEN. FRASER: I'm not advised. I --

8 SEN. WEST: Okay. Have you talked to
9 any African- --

10 SEN. FRASER: I haven't looked at the
11 list of who is going to testify.

12 SEN. WEST: Have you talked to any
13 African-Americans or Hispanics about the impact that
14 your bill will have on their right to vote?

15 Let me tell you what I'm getting to.
16 Have you talked to any African-Americans? Have you
17 done an assessment in terms of whether or not this
18 particular bill and the methods that you are employing
19 will be retrogressive as it relates to the minority
20 voters of the State of Texas?

21 SEN. FRASER: I think the answer is the
22 same answer I gave you about four questions ago, is
23 that I looked at -- and I've spent a lot of time
24 examining the data of actual voter turnout that
25 happened after the implementation of a photo ID bill

1 in Indiana and in Georgia. And I have invited the
2 election judges from both states to come and share
3 that with you today, and I feel sure that they will be
4 glad to answer your questions.

5 SEN. WEST: And based on your
6 observation of what occurred in those particular
7 states, you believe that your bill, if enacted in law,
8 will not have any retrogressive impact on the minority
9 voters of the State of Texas?

10 SEN. FRASER: I think my bill is going
11 to increase African-American and Hispanic turnout in
12 Texas. I think those people today feel
13 disenfranchised because they feel like there is fraud
14 going on in votes today --

15 SEN. WEST: Well, have you talked to
16 any --

17 SEN. FRASER: Are you interrupting me?

18 SEN. WEST: Yes. I --

19 SEN. FRASER: Just a second. I get to
20 finish.

21 SEN. WEST: But you say you feel like
22 those people. My question is, who have you spoken to,
23 to come to that assertion that those people feel as
24 though that there's fraud and all that stuff? What
25 African-Americans and Hispanics -- have you spoken to

1 some to make that assertion, in the State of Texas?

2 And I'll listen to you now. I'll listen
3 to you now respond to my question.

4 SEN. FRASER: I have laid out a bill and
5 researched, asked questions about the way people vote.
6 I believe I have a bill that will encourage people
7 that their vote will count and their vote is not going
8 to be diluted by those that cheat. I think that will
9 encourage voters, as it did in Indiana and in Georgia.

10 And I believe that this bill is not only
11 good for the people of the State of Texas, but I'm
12 pretty familiar with the ethnic makeup of the people
13 you represent. And I think this bill will be
14 extremely good for Royce West's senatorial district.

15 SEN. WEST: Well, and I appreciate your
16 thoughts. But let me ask you again, you made some
17 assertions that you believe that it's going to be good
18 for every one of Royce West's district and ethnic
19 minorities in the State of Texas. You made assertions
20 that this will prevent people from cheating and all
21 that other stuff. And I'm asking you, as relates to
22 voter impersonation, have you talked to any African-
23 Americans or Hispanics that said there was a problem
24 in the state, that this is a problem in the state?
25 Have you talked to any African-Americans in the state?

1 SEN. FRASER: Without a doubt, the
2 way -- and I think after we hear the testimony of the
3 witnesses here, and the Secretary of State, it's going
4 to be hard for you to disagree that there is not a
5 problem and the people you represent are not being not
6 served correctly by the current law of Texas. And as
7 a reasonable person -- which I know you are. I know
8 you -- you know, you and I have served together for
9 the last 12 years --

10 SEN. WEST: Oh, yes.

11 SEN. FRASER: -- and I respect you a
12 lot, you know. And I think once you listen to the
13 testimony, you're going to have trouble not agreeing
14 that the people you represent will be well-served by
15 this bill, and I believe that.

16 SEN. WEST: Okay. And, you know, that's
17 fine. But the answer to my question is, have you
18 spoken to anyone?

19 SEN. FRASER: Yes, I have.

20 SEN. WEST: African-Americans and
21 Hispanics --

22 SEN. FRASER: Yes.

23 SEN. WEST: -- that say that cheating is
24 a problem in the State of Texas, that voter
25 impersonation is a problem in the State of Texas, have

1 you've spoken with anyone?

2 SEN. FRASER: I have spoken to --

3 SEN. WEST: African-Americans and
4 Hispanics?

5 SEN. FRASER: -- African-Americans and
6 Hispanics --

7 SEN. WEST: In the State of Texas?

8 SEN. FRASER: -- in the State of Texas.
9 And, you know, I have spoken to a lot of people in
10 different classes. And the people of this state
11 believe that -- 88 percent of the people polled
12 believe that a photo or a voter ID in Texas should be
13 something we should implement.

14 SEN. WEST: Sir, but --

15 SEN. FRASER: And of those -- just a
16 second. Of those -- and the number I saw -- and I
17 believe it was 74 person of the people surveyed were
18 African-American that said they believe that we should
19 implement a voter ID in Texas because they are
20 concerned about the --

21 SEN. WEST: Do you have a copy of that
22 study?

23 SEN. FRASER: Yes. I do have -- we have
24 a Rasmussen study, and then there is a secondary study
25 and we will get that -- I will get that for you, yes.

1 SEN. WEST: Mr. Chairman, I would like
2 to see that.

3 SEN. FRASER: I will be glad to show it
4 to you.

5 SEN. WEST: So you've depending upon a
6 survey that was done? You're depending upon a survey
7 that was done in order to make the statement that
8 you're making in terms of talking to African-Americans
9 and Hispanics?

10 SEN. FRASER: No. I'm relying on actual
11 data of people that voted this election cycle that
12 didn't vote in the election cycles before, because
13 they were encouraged that their vote was going to
14 count.

15 SEN. WEST: Okay. And going back to --
16 and let me make sure I understand your response to
17 this question. You've said that in order to get an
18 answer as relates to whether or not any less
19 regressive means were considered by you as the author
20 of this bill would have to talk to the Secretary of
21 State?

22 SEN. FRASER: I don't think I said that
23 at all. I don't think --

24 SEN. WEST: Well, and you --

25 SEN. FRASER: We even talked about less

1 regressive means. I said the Secretary of State is
2 going to tell you the current state of the law in
3 Texas and tell you we've got a big problem --

4 SEN. WEST: As it relates to regressive
5 means and an aggressive -- a regressive analysis in
6 terms of the impact that it has on minority voters.
7 Who on your panel would be able to answer that
8 question? What experts would be able to answer that
9 question?

10 SEN. FRASER: I suspect probably every
11 witness that is --

12 SEN. WEST: Every witness?

13 SEN. FRASER: I think so.

14 SEN. WEST: Okay.

15 SEN. FRASER: I think so. I suspect
16 that -- we've got two personal -- or three personal
17 examples, because we've got Indiana and Georgia.
18 We've got the registrar from Houston that, you know,
19 you can ask those questions. We've got the Secretary
20 of State's office, and then we've got the Carter-
21 Baker administration -- or the --

22 SEN. WEST: Does your bill do anything
23 about fraud as it relates to denying people the right
24 to vote?

25 SEN. FRASER: Say it again.

1 SEN. WEST: Does your bill do anything
2 about fraud as relates to denying people the right to
3 vote? You know, there may very well be individuals
4 that come into precincts and -- you know, back in
5 Dallas -- because you've talked about it a couple of
6 times. I think it was in 1984, we had a bunch of
7 judges come down to African-American precincts and put
8 up signs basically saying, "You can go to jail." Were
9 you aware of that?

10 SEN. FRASER: No, I'm not.

11 SEN. WEST: Okay. This bill does
12 nothing about that type of behavior, though. Right?

13 SEN. FRASER: This bill --

14 SEN. WEST: Okay.

15 SEN. FRASER: -- is really straight-
16 forward, Senator. This only addresses one narrow part
17 of the election code, and that is the fact that when
18 you walk into that voting place, you're going to
19 identify that when you vote as Royce West, they are
20 verify you are who you say you are.

21 SEN. WEST: Those poll workers, how much
22 do we pay poll workers, Senator?

23 SEN. FRASER: I'm not advised, but I bet
24 the Secretary of State knows.

25 SEN. WEST: Okay. And so those poll

1 workers will make that determination -- right? -- as
2 to whether or not a person has the proper
3 identification? Let me ask you this: Let's say that
4 Troy Fraser's name was misspelled on the voter
5 registration list, and you came in with your driver's
6 license and it's correctly spelled. What would happen
7 in that circumstance?

8 SEN. FRASER: And again, I'm going to
9 punt to the Secretary of State, that they would make
10 the determination. But I think likely the easy answer
11 is, is that there is a system today under current law
12 for a determination of that, that -- and I'll give you
13 this example. I'm not real good about taking my voter
14 registration card. I usually take my driver's license
15 in. And if they had me on the rolls as F-r-a-z-e-r
16 and my driver's license says F-r-a-s-e-r, there is a
17 provision today under current law to manage that. I
18 bet you that the --

19 SEN. WEST: I do the same thing. I
20 normally just take my driver's license in.

21 SEN. FRASER: Well, but there's --

22 SEN. WEST: And some people just take a
23 utility bill in.

24 SEN. FRASER: And the answer to your
25 question is, I'm not addressing that. That is --

1 under current law, the Secretary of State has the
2 ability to address that. And I think the answer is
3 that if they can't determine your exact -- you know,
4 who you are, they could provide a provisional ballot,
5 do their research, find out you are okay and then let
6 you vote.

7 SEN. WEST: And I think that's exactly
8 the way that it plays out. But as it relates to
9 provisional ballots -- and I think Sen. Ellis raised
10 this question a few moments ago. What happens in that
11 circumstances? You have a poll worker make a
12 determination that Fraser is spelled wrong, you do the
13 affidavit, you do a provisional ballot. When is that
14 ballot counted under your bill?

15 SEN. FRASER: The Secretary of State --
16 I mean --

17 SEN. WEST: The Secretary of State's
18 office?

19 SEN. FRASER: -- will be glad to answer
20 that for you.

21 SEN. WEST: Okay. That's fair. Okay.
22 Thank you very much, Sen. Fraser.

23 SEN. FRASER: Thank you.

24 SEN. DUNCAN: I will remind the members
25 that we still have invited testimony, numerous

1 witnesses, and then also public testimony, who have
2 been waiting here today to testify.

3 So we'll move now -- Sen. Hinojosa,
4 you're recognized.

5 SEN. HINOJOSA: Thank you,
6 Mr. President.

7 Sen. Fraser?

8 SEN. FRASER: I'm sorry, Senator, I
9 didn't hear him introduce you. I'll be glad to answer
10 your questions.

11 SEN. HINOJOSA: I only have a few
12 questions for you.

13 SEN. FRASER: And, Senator, I'm sorry.
14 Let me get my head piece. I can already anticipate
15 I'm going to have trouble hearing you. Just a second.

16 (Brief pause)

17 Are you there?

18 SEN. HINOJOSA: Yes, sir.

19 SEN. FRASER: Do a little mike test. It
20 still is not working.

21 Can you give me a mike test? One, two,
22 three, four, five.

23 SEN. HINOJOSA: Is it working now? Can
24 you hear me?

25 SEN. FRASER: No, it's not working.

1 (Brief pause)

2 Senator, let's try that one.

3 SEN. HINOJOSA: Okay. Can you hear me
4 now?

5 SEN. FRASER: I've got you now. Thanks.

6 SEN. HINOJOSA: Okay. Thank you,
7 Senator.

8 SEN. FRASER: I'm --

9 SEN. HINOJOSA: I just have a few
10 questions, and they deal more with the process and
11 trying to identify people who come to vote, with a
12 photo ID identification. What type of training will
13 poll watchers have in order to determine whether or
14 not a photo ID is valid or a fraud?

15 SEN. FRASER: Senator, I don't want to
16 be cute or cut you off, but that's the same question
17 the last seven people have asked. And the Secretary
18 of State has been invited here to answer that
19 question, and they can answer it a lot better than I
20 can.

21 SEN. HINOJOSA: Well, but in your
22 legislation, do you have provisions to provide some
23 type of detection equipment to be able to tell whether
24 or not a photo ID is fake?

25 SEN. FRASER: My bill is very straight-

1 forward in what will be required to identify. But the
2 implementation of that and the training of the people
3 will be left up to the Secretary of State. And I
4 would bet you the Secretary of State would love to
5 answer your question on that.

6 SEN. HINOJOSA: Well, let me follow up
7 again. You know, it's very easy to get a fake ID at
8 the flea markets and pay 20 bucks for them. And my
9 question is, if you don't provide any legislation for
10 any type of equipment to be able to detect whether or
11 not that is a fake ID, then it defeats the whole
12 purpose of your legislation.

13 SEN. FRASER: And, Senator, I think you
14 have just made my case for me. That's the exact
15 reason that we're doing this bill, is that there are
16 people out there, unscrupulous people doing exactly
17 what you just said, that they are taking
18 identification of the people you represent and they
19 are going and fraudulently voting and that we don't
20 have the ability to either recognize that they have
21 done that or to prosecute them after they have. Thank
22 you for bringing that up.

23 SEN. HINOJOSA: Senator, that's not the
24 question that I asked. That's not what I asked. I
25 said do you have provisions in your legislation to

1 provide the funding for the local precincts to
2 purchase equipment to be able to detect whether or not
3 a photo ID is a fake?

4 SEN. FRASER: Senator, I'm sorry.
5 Did you get another head thing?
6 Senator, let's try it one more time.
7 Would you ask that question again, please.

8 SEN. HINOJOSA: Can you hear me?

9 SEN. FRASER: This receiver is a bad
10 receiver. I'm getting nothing but interference.
11 Can somebody get one of these that
12 works?

13 Let me try without it.

14 SEN. HINOJOSA: Okay.

15 SEN. FRASER: Where is Lucio's?

16 Go ahead.

17 SEN. HINOJOSA: I will repeat my
18 question, Sen. Fraser. And what I'm asking is whether
19 or not in your legislation you have provisions to fund
20 the detection equipment that will be able to tell
21 whether or not an ID is a fake one?

22 SEN. FRASER: Senator, again, I think
23 that would be a question of the Secretary of State, is
24 that -- I think you could ask him how they're going to
25 do it. But we -- as you know, the way this works --

1 you have been here like I have, a long time -- we lay
2 this legislation out. They come back with a fiscal
3 note of the impact to the state. They said there is
4 no impact to the state, that they have sufficient
5 money within their budget to handle it. And I would
6 suggest you ask that question of the Secretary of
7 State.

8 SEN. HINOJOSA: Well, I think that it's
9 very important that you have provisions in your
10 legislation to deal with this issue. When you travel
11 by airplane, by air, as you well know, they scan your
12 driver's license and they can tell whether or not it's
13 a fake driver's license. And what I'm asking of you
14 is whether or not you have provisions in your
15 legislation to deal with fake IDs from the flea
16 market, for example? I guess not.

17 SEN. FRASER: I don't want to dodge your
18 question.

19 SEN. HINOJOSA: But you are.

20 SEN. FRASER: But you're asking a
21 question that is a technical question of the agency.
22 And again, I don't want to speak for my witnesses.
23 But the guy that's going to speak from Houston,
24 Houston is, in fact, using that exact same thing right
25 now. So in some areas, it's already in place.

1 SEN. HINOJOSA: Well, think about this:
2 How many precincts do we have here in the State of
3 Texas? And if we are going to check on IDs and
4 whether or not they're fake, you need to have the
5 proper equipment in place. How much are they going to
6 cost and who is going to pay for it?

7 SEN. FRASER: Senator, you need to ask
8 the Secretary of State. And, you know, that is a
9 technical question that the agency is going to have to
10 answer.

11 SEN. HINOJOSA: Well, I guess the real
12 answer, it may be an unfunded mandate on the counties.

13 SEN. FRASER: Well, I don't think
14 there's something in the bill that places a mandate on
15 them to buy equipment for that. You know, I would
16 suspect that there is a system within the DPS to help
17 identify that. And I think -- I don't want to over-
18 project, but I suspect that between the Secretary of
19 State's office and in the counties, that there is a
20 system that if you input a number, that they can tell
21 whether they're a real number or not. And I'm sorry.
22 You're getting into an area that I don't have
23 expertise in.

24 SEN. HINOJOSA: Well, I think it's very
25 important to have some provisions in your legislation

1 dealing with this issue because, otherwise, there is
2 no way that you can have a poll worker know whether or
3 not a photo ID is a fake one or not.

4 Let me also ask another question. Have
5 you considered how much longer it would take for
6 voters to vote, where the lines would be longer and it
7 would discourage people to vote?

8 SEN. FRASER: Why don't you ask that of
9 the Indiana and the Georgia people. They just went
10 through two election cycles in Indiana, one in
11 Georgia. They have already done this. That would be
12 an excellent question for them.

13 SEN. HINOJOSA: But, Sen Fraser, you are
14 the one carrying the legislation, not them.

15 SEN. FRASER: And that's the reason I
16 invited expert witnesses in, of people that have
17 already put this in place. The advantage we've got is
18 that we're not reinventing the wheel on that. We can
19 find out their information of what happened.

20 SEN. HINOJOSA: Well, I think your bill
21 really needs a lot of work. It has a lot of
22 shortcomings with it in the way it's going to be
23 implemented.

24 And thank you for answering my
25 questions.

1 SEN. FRASER: Thank you.

2 SEN. DUNCAN: Sen. Uresti.

3 SEN. URESTI: Thank you, Mr. President.

4 Sen. Fraser, I just have a few
5 questions. I know it's been a long day, but I would
6 like to ask a few questions more specific to my
7 district.

8 But as a backdrop to my questions, not
9 only to you but to the witnesses that you've been
10 referencing all day, you have probably heard me speak
11 to this session, my senatorial district is the largest
12 geographical district in Texas.

13 SEN. FRASER: I know your district well.
14 There's a lot of it that I used to represent, so I'm
15 very familiar with it.

16 SEN. URESTI: And it's actually larger
17 than about 24 states in the country.

18 SEN. FRASER: It's a great district,
19 good people.

20 SEN. URESTI: It is a beautiful
21 district. And one of the reasons I stand today to ask
22 you these questions is, I represent the constituents
23 of my district. In addition to being the largest
24 district in Texas, it's also the second poorest
25 district in Texas. The per capita income, the average

1 per capita for my constituents is \$12,484 per year.

2 SEN. FRASER: Are you aware of the fact
3 that just right below, right above that is the
4 district that I represent? And so we have a lot in
5 common in the people that I represent and the people
6 you represent, because our districts touch. And a lot
7 of the people that you represent now are people that I
8 used to. So we have a very like district.

9 SEN. URESTI: And even more reason why I
10 think you will appreciate the questions that I have of
11 you, Sen. Fraser. In my district, the poverty rate is
12 approximately 24 percent. So when you couple the
13 poverty rate with the vast area of my district, you
14 see the challenges that my constituents face.

15 And I tell you that because when we talk
16 about photo ID and the necessity to obtain an ID,
17 whether it be a driver's license or whether it be an
18 actual Texas photo ID, knowing the area as well as you
19 do, when you look at some of the counties in my
20 district, I think you probably, better than most,
21 fully appreciate the distances that one has to travel
22 in order to get an ID. And I'll just give you a few
23 examples. In addition to that, though, the fact that
24 many of these DPS offices are only open on very
25 sporadic days and times.

1 For example, in Bandera County, it's
2 open -- the DPS office is only open on Wednesdays from
3 9:00 to 4:00. In Culberson County, it's only open --
4 the DPS office is only open on Thursdays from 9:00 to
5 5:00.

6 In Kinney County, which is where
7 Brackettville is located, the DPS office is only open
8 the first and third Tuesday of each month from 9:00 to
9 4 o'clock. And then one other example of many,
10 Terrell County, which is down where Sanderson is
11 located, the DPS office is only open one Monday a
12 month from 9:30 to 3:30.

13 So having said that, my concern is the
14 fact that if an individual needs to obtain a photo ID
15 or a Texas driver's license, the challenges that they
16 will face in, one, having to go to those offices; two,
17 the distances that they'll have to travel; and then
18 three, if they're not familiar with the dates or the
19 times that they are open, the fact that they may have
20 to go back.

21 And if they're not registered or they do
22 not obtain that in a timely manner, which I understand
23 it could take up to 60 days or so to receive your
24 photo ID, there is a very good chance that they will
25 not be able to have that ID when they do go to vote.

1 Would you agree with me on that, Sen. Fraser?

2 SEN. FRASER: Well, that was a
3 consideration in looking at the parameters, is that
4 the good news for you is, we still have all the same
5 parameters for mail-in ballots. We haven't changed
6 that. And all these other forms, there is just a
7 multitude of things they can use for a secondary form
8 of identification. So if for some reason they
9 couldn't get to that -- and I would -- you know, you
10 and I know that most of those people out there drive
11 and they do have cars, the bulk of them do, and they
12 would be -- they would really like to go and get that
13 driver's license. But if they couldn't and they were
14 going to vote, there is a multitude of things they can
15 use for identification to make it really, really easy,
16 or they could do a mail-in ballot. We've made it easy
17 for them.

18 SEN. URESTI: And I appreciate you
19 bringing that up, because that's a good segue into my
20 next question. But again, going back to the poverty
21 rate, I would respectfully disagree with you,
22 Sen. Fraser, that they all have cars, because most of
23 them can't afford cars, at least in my district.

24 On Page 5 of your bill, Senator, you
25 reference -- Page 5, Line 20, under "Documentation of

1 Proof of Identification," you reference "a United
2 States military identification card that contains the
3 person's photograph." And I just want to make sure
4 that I clearly understand what you have in your bill,
5 and that for those military individuals, whether they
6 be active duty, reservists, retired, et cetera, if
7 there is no photograph on their military ID, then they
8 would not be able to use that ID under your bill. Is
9 that correct?

10 SEN. FRASER: I'm sorry, Senator. I
11 think you probably have misread this. You're under
12 the section that lays out the acceptable form of photo
13 ID. But if it doesn't have a photo on it, it could be
14 used as one of the non-photo IDs, plus one other form
15 of identification. So the answer to your question is,
16 yes, they could use it.

17 SEN. URESTI: Okay. So a military ID
18 that does not have a photo could be used?

19 SEN. FRASER: Yes. It's a form of
20 government identification.

21 SEN. URESTI: Okay. That's not the way
22 I read it, but I'm glad you cleared that up for me.

23 SEN. FRASER: Under the (2), it would be
24 one of their forms of identification. It is a
25 government-issued form of identification. And under

1 the non-photo area, it would be used.

2 SEN. URESTI: And just so I'm clear, it
3 reads "a United States military identification card
4 that contains the person's photograph." What my
5 question is, if there is a military ID card that does
6 not have a photograph, then you're saying that those
7 military individuals, whether they be active duty,
8 whether they be reservists, whether they be retired,
9 would not be able to vote with that form of ID. Is
10 that correct?

11 SEN. FRASER: That is not correct. That
12 would be one of their forms of ID. And if they had
13 one other piece of identification, their utility bill,
14 with that military ID, they're fine.

15 SEN. URESTI: Whether it has a
16 photograph or no?

17 SEN. FRASER: Yes.

18 SEN. URESTI: Okay. Very good. That's
19 good to know.

20 Going into the alternative forms of
21 documentation, specifically on Page 6, what I'm trying
22 to reconcile and what is confusing to me, and I
23 believe would be very confusing to the voters of
24 Texas, and complicated, on Page 6, Line 14, you list
25 the following documents -- I beg your pardon -- "The

1 following documentation is acceptable as proof of
2 identification under this chapter."

3 Then it goes on to read, Subparagraph
4 (1), a copy of a current utility bill; Paragraph (2),
5 official mail; Paragraph (3), a certified copy;
6 Paragraph (4), United States citizenship papers;
7 Paragraph (5), an original or certified copy; and then
8 No. (6,) court records.

9 And so I'm trying to reconcile those
10 different terms in that you have a copy, you have
11 official document, you are certified document, you
12 have papers, you have original or certified copy, and
13 then you have court records.

14 And to me, that's confusing as an
15 attorney, much less I think to my constituents. And
16 so specifically -- this is my question, Sen. Fraser --
17 on No. (16) (sic) under the Paragraph (b) where it
18 reads, "a copy of a current utility bill, bank
19 statement, government check, paycheck, or other
20 government document," that leads me to believe that if
21 they brought the original document, they would not be
22 able to use the original document, it would have to be
23 a copy of that document. Is that correct?

24 SEN. FRASER: I think you're over-
25 reading the issue, because this is current law. This

1 is current law that we're operating. If you voted in
2 this last election, you voted under this. If you will
3 look at that -- and I believe -- is that not taken
4 from current law? So if you're confused about it
5 today, you were confused about it yesterday, because
6 it was -- that's current law.

7 SEN. URESTI: Well, let me tell you why
8 I'm confused, Sen. Fraser, because if you go on into
9 Paragraph (2) that's not current law, and Paragraph
10 (3) that's not current law, for specifically Paragraph
11 (3,) you insert "a certified copy." Paragraph (5),
12 you put "an original or certified copy." So that's
13 why it's confusing, Sen. Fraser, and that's why I'm
14 trying to clarify it, because you use a copy in one
15 instance, then you use a certified copy in another
16 instance. But here is my question. I want to go back
17 to my question.

18 SEN. FRASER: Wait, wait, wait. Hold on
19 a second. You've got to answer the one that you just
20 asked. One of the great things about these
21 hearings -- and it's the same answer I gave now to the
22 last eight people I've talked to -- I'm about to have
23 the Secretary of State come up here. The Secretary of
24 State's job is to issue the clarification of adopting
25 rules to clarify the implementation of the law we

1 passed. And I would -- I don't want to put words in
2 their mouth, but I would assume they're going to say,
3 "We can handle that."

4 SEN. URESTI: Okay. And I appreciate
5 that. And because you can't speak for the Secretary
6 of State and because you are the author of this bill,
7 I just wanted to ask you, so I could clarify and so I
8 can explain it to the voters of Texas and to my
9 constituents, then -- and I think you understand now
10 what I'm trying to reconcile in that you asked for
11 different documentation. And, one, it can be a copy
12 or it can be the official mail, et cetera. And I will
13 ask the specific questions of the Secretary of State.

14 SEN. FRASER: I think it would be a good
15 idea to do that.

16 SEN. URESTI: But because you are the
17 author, I wanted to ask you specifically. And then I
18 think my last question, Sen. Fraser, if you bear with
19 me one second. I beg your pardon.

20 On Page 4 under Section 8, on Line 20
21 where it reads "did not deliberately provide false
22 information to secure registration in a precinct in
23 which the voter does not reside," I'm trying to
24 understand what you mean when you put "deliberately
25 provide false information."

1 SEN. FRASER: Senator, again --

2 SEN. URESTI: And (2) --

3 SEN. FRASER: -- I don't want to
4 interrupt you here, but you're quoting current law.
5 That's law right now that we have been living under
6 for some period of time. And if you've got a question
7 about the interpretation of the Secretary of State's
8 rule on that, I bet they would answer it.

9 SEN. URESTI: And I hope they can. But,
10 Senator, this is part of your bill, though. (1) --

11 SEN. FRASER: Now, just a second. You
12 know the way this works in legislation is that if it's
13 current law, you reprint current law. And if you're
14 going to make a change, you insert it and underline.
15 And all we're doing there -- we could have left all
16 that out and make you work and go see how it fits
17 together. But, you know, you have been here a long
18 time, and you know that's the way it works is, we go
19 ahead and tell you what current law is so it reads
20 correctly. I didn't make that law up. It's just a
21 law that is there. And I think you could ask the
22 Secretary of State the way it's interpreted.

23 SEN. URESTI: And I appreciate that.
24 But did you not strike certain language from current
25 law in this bill, Sen. Fraser?

1 SEN. FRASER: If it was struck -- did we
2 strike -- just a second.

3 (Brief pause)

4 I'm not advised as to whether we struck
5 something. I believe the language that you're
6 referring to on Line 20 is current law and above and
7 below it is current law. And I, to my knowledge --
8 but again, I think you should ask the Secretary of
9 State that.

10 SEN. URESTI: And I'll do that. Thank
11 you, Sen. Fraser.

12 SEN. FRASER: You bet. Thank you.

13 SEN. DUNCAN: Sen. Van de Putte.

14 SEN. VAN de PUTTE: Thank you,
15 Mr. President.

16 And, Sen. Fraser, I'm . . .

17 SEN. FRASER: It was wishful thinking.

18 SEN. VAN de PUTTE: And I would have
19 hoped that this question would have been asked before,
20 and I've listened and it's not, and I know that we
21 would love to --

22 SEN. FRASER: I would love to have a new
23 question.

24 SEN. VAN de PUTTE: Well, thank you.
25 I'm going to be very, very quick. I am looking at

1 Page 5, Line 27.

2 SEN. FRASER: Just a second. Let me get
3 my glasses, Senator. Hold on. I'm deaf and blind.

4 SEN. VAN de PUTTE: Section 10 of the
5 bill.

6 SEN. FRASER: Section 10. What page?

7 SEN. VAN de PUTTE: Page 5, Line 27.

8 SEN. FRASER: Got it.

9 SEN. VAN de PUTTE: In that section,
10 there is a change from the United States citizenship
11 papers -- and you strike that -- to certificate. Tell
12 me, what is the difference between a certificate and
13 the papers?

14 SEN. FRASER: Senator, again, you and I
15 have served together a long time. And you know when
16 these bills come from Leg. Council, that if there is
17 clean-up legislation, they need to clarify something
18 that is either case law. The answer is, I don't know
19 why they struck that.

20 SEN. VAN de PUTTE: Well, it --

21 SEN. FRASER: It was not our
22 recommendation. This came from Leg. Council this way.
23 I can find out the answer to that --

24 SEN. VAN de PUTTE: Okay.

25 SEN. FRASER: -- but I can honestly say

1 I don't know.

2 SEN. VAN de PUTTE: Okay. Well, I think
3 there is different terminology. It is my
4 understanding, since I represent a Hispanic
5 district -- and many of the senators here have a
6 number of Hispanics -- this is especially important
7 for naturalized citizen. It is my understanding that
8 the certificate means the 8-by-11 certificate with a
9 photo that is given at the time of naturalization. So
10 it does have a photo, and it's under your section that
11 it would be okay for a photo. My question is that the
12 government also issues a wallet-sized card that is
13 listed as a paper. That could be part of the paper,
14 but it has no ID.

15 On the section of the bill that you talk
16 about non-photo, which would be Page 6, Line 24, it
17 says "United States citizenship papers." Papers I
18 think are the card. But the papers, are they the
19 certificate? And the reason I ask is, because at the
20 time of naturalization -- and many of us have
21 Hispanics in our district that as young children were
22 naturalized. That picture is of a child and doesn't
23 match up. So how --

24 SEN. FRASER: Senator -- and again, I
25 don't want to dodge your question. I think probably

1 this is a legitimate question to ask the Secretary of
2 State.

3 SEN. VAN de PUTTE: Okay.

4 SEN. FRASER: I'm not sure they can
5 answer that one. But I will tell you my intent on
6 this is not to deny any legal voter that should have
7 the right to vote, and that if someone is using this
8 as a source of documentation and it is a legal
9 documentation that proved they are who they say they
10 are, I want them to be able to use it. I want all
11 Hispanics that you represent --

12 SEN. VAN de PUTTE: Yes.

13 SEN. FRASER: -- to have the ability to
14 vote under this bill, and my intent is to increase
15 their right to do that. So if there is a tweak needed
16 there, I can tell you I'm open to it. I don't know
17 the answer to the question you're asking.

18 SEN. VAN de PUTTE: Well, thank you. In
19 researching that, there is a difference between
20 "certificate" and "paper." On one, the certificate
21 does have a photo ID; the paper does not. And I think
22 that's probably why Leg. Council did that.

23 SEN. FRASER: You and I could probably
24 sit down with a Leg. Council lawyer, ask them what
25 happened, the meaning of that. And it is certainly

1 not my intent in any way to deny someone the right to
2 vote. My intentions are exactly the opposite. I want
3 them to be able to identify themselves and vote.

4 SEN. VAN de PUTTE: Well, thank you,
5 Senator, because the picture photo for many of my
6 constituents who have been naturalized and are now
7 adults or maybe even elderly does not match up,
8 because that was taken at the time of naturalization.

9 And my fear was that an election clerk,
10 having to know the difference between certificates and
11 paper and then maybe the name not matching up,
12 particularly for women who then would be -- the
13 naturalization paper certificate would never match up
14 with your married name if you were naturalized as a
15 child, and that would be extremely discriminatory
16 toward Hispanic citizens and particularly to this
17 state, which may not have been a problem in Georgia or
18 Indiana but is definitely a problem here, and I
19 appreciate that.

20 SEN. FRASER: Not a -- absolutely, we
21 want -- if someone is a legal citizen and has
22 identification and they're registered to vote, then I
23 want them to have the ability to do that.

24 One of the questions you just asked
25 about the picture not matching up, I would also advise

1 you to ask the Secretary of State that, is that I
2 think there's methodology, that it's even addressed --
3 it was anticipated -- in some of the things I read,
4 that if I grew a beard and I don't look like I used
5 to, a methodology to make sure that we could verify
6 who you say you are.

7 SEN. VAN de PUTTE: Thank you, Senator.
8 And I have one follow-up question. You and I have the
9 luxury and the blessing of representing many now Texas
10 residents who are voting in the state who happen to be
11 military families and military members. And I know
12 you are well aware of Fort Hood and Sen. Shapleigh at
13 Fort Bliss. My question is a follow-up to Sen.
14 Uresti's questions on military ID.

15 Many times the identification of record
16 doesn't have the address of the voting. So if they
17 were voting here but their address of record is at --
18 how would, under your bill, a clerk treat that
19 inconsistency of a nonmatch-up for our military
20 members?

21 SEN. FRASER: Again, Senator -- and I
22 thank you for acknowledging my district being
23 impacted. I believe that I have the largest number of
24 ex-military in the state living in my senate district,
25 you know, former military. I want to make sure that

1 they have the right to vote.

2 Yes, they do change addresses, but this
3 is something that we have been coping with for years,
4 even under our current system. Again, I think the
5 Secretary of State is capable of not only answering
6 that question but also making sure we have a seamless
7 transition to this, because it's extremely important
8 to me, and I know it is to you, is that I want to make
9 sure that our brave men and women that have served
10 this country preserve that very basic right in making
11 sure they get to vote in elections.

12 SEN. VAN de PUTTE: Thank you, Senator.
13 I appreciate that. And I want to clarify, just for
14 the last time, so that I understand. With the changes
15 that you are proposing, every Texan who wishes to cast
16 a ballot would have to bring both their certificate,
17 voter certificate that's issued by the jurisdiction
18 that they've registered in, and some sort of photo
19 identification. Is that correct?

20 SEN. FRASER: Well, that's not exactly,
21 the way you phrased that. Actually, for someone to
22 vote, all they've got to do is show up. So that
23 the -- I need to ask a question. I just thought of
24 something.

25 (Brief pause)

1 Okay. I'm sitting here having a
2 discussion with my staff, clarifying that that is the
3 case. And I can tell you, my intent on this would be
4 that it's -- here would be the example I would give
5 you. I go to Marble Falls or Horseshoe Bay to vote.
6 I never have my voter ID. I always just pull out my
7 driver's license. Let's just say for some reason I
8 forgot my driver's license. My intent would be, if I
9 have two other pieces of identification listed here
10 and they match up with the voter roll and it says,
11 "Troy Fraser, 103 Lighthouse," a particular precinct,
12 it would be my intention you should vote.

13 SEN. VAN de PUTTE: Well, that's --

14 SEN. FRASER: I'm not clear -- I want to
15 make sure, as you do -- and I think what you're
16 raising is making sure that the bill absolutely says
17 that, and that is the intent.

18 SEN. VAN de PUTTE: Well, thank you,
19 Sen. Fraser, because the way I looked at this, I
20 thought that every Texan who wants to cast a ballot
21 now will have to present with both the voter
22 certificate and a photo ID or the certificate and two
23 alternate forms. So you either have a two-fer or a
24 three-fer. And I'm just wondering if that's correct
25 or if someone shows up and they do not have their

1 certificate, do they just need a photo ID? And if
2 they show up and they don't have their certificate or
3 a photo, what other two --

4 SEN. FRASER: I don't have the answer
5 for you today. I'll be honest with you, that I've got
6 to look at that. I wish I could give you an answer on
7 that, but I don't have an answer right now. And I've
8 got to look at the bill, talk to the Secretary of
9 State's office, see how that flows together, look at
10 the election official and determine how we blend that
11 together.

12 My intention is that I want everyone to
13 vote. I'll give you that as a blanket answer. My
14 intention is that if someone can prove who they say
15 they are, I want them to vote.

16 SEN. VAN de PUTTE: Thank you,
17 Sen. Fraser.

18 SEN. FRASER: Thank you.

19 SEN. DUNCAN: Nobody else?

20 All right, members. Sen. Gallegos -- I
21 thought I had lost count.

22 SEN. GALLEGOS: A question of the
23 author.

24 SEN. FRASER: This is the three-minute
25 rule. Are we using the egg timer rule?

1 SEN. GALLEGOS: Well, you already
2 surpassed that, so I thought I would --

3 SEN. FRASER: No. I'm still just
4 answering your questions.

5 SEN. GALLEGOS: Well, Senator, let me
6 ask you, have you thought about the state of our
7 economy and the steadily rising number of foreclosures
8 taking place? And I'm talking about this bill. Just
9 last week, the Dallas Morning News reported that the
10 Carrollton-Farmers Branch School District has seen
11 185 percent increase in the 2008-2009 school year of
12 homeless students.

13 SEN. FRASER: Senator, can you help me
14 here? I'm having trouble. I'm looking at the bill,
15 and I'm having trouble finding the place that has to
16 do with foreclosures.

17 SEN. GALLEGOS: Well, no, no, no. I'm
18 getting to my question, if you allow me.

19 SEN. FRASER: I will.

20 SEN. GALLEGOS: These are people in the
21 State of Texas whose entire families are affected.
22 And the homeless, as you know, well know, they move
23 around a lot. They're U.S. citizens, and they move
24 around a lot and stay in cars, in shelters and
25 sometimes relatives' houses. But the important thing

1 is that they do not have a permanent residence, even
2 though they're U.S. citizens.

3 And I guess -- and they don't have
4 utility bills, they aren't on a current regular
5 schedule. And to show, if that is asked for when they
6 go to a precinct to vote, I guess my question is,
7 under your bill, under this scenario, is there a limit
8 on how many times they can get an official DPS ID to
9 vote every couple of weeks?

10 SEN. FRASER: Well, first of all, I'm
11 confused in your description of this, because for
12 someone to register to vote and be legal to vote, they
13 have to specify the precinct that they're in. And
14 that's one -- I think one of the requirements that the
15 Secretary of State looked for, is that you have to be
16 a resident voting in a specific precinct, and they had
17 to mail that to somewhere. But the answer to your
18 question that you were getting to is, is there a limit
19 on the number of IDs they can get? And, no, there is
20 no limit.

21 SEN. GALLEGOS: There is no limit under
22 your bill?

23 SEN. FRASER: No limit.

24 SEN. GALLEGOS: Okay. All right. Thank
25 you.

1 SEN. FRASER: Unlimited IDs.

2 SEN. GALLEGOS: There's unlimited ID.

3 Okay. All right. Thank you.

4 SEN. FRASER: Thank you.

5 SEN. DUNCAN: Okay, members. If there
6 are no other questions, we are now ready to move into
7 the invited testimony phase of the hearing. So at
8 this point in time, I think I have been submitted --
9 actually, we had the Secretary of State collect the
10 list from the author and those who might be opposed to
11 the bill.

12 And, as stated earlier, I will first
13 invite -- we'll have Hans von Spakovsky to testify
14 first. He is proposed by Sen. Fraser. And then
15 followed by that, we'll have Tova Andrea Wang, who is
16 proposed by Sen. Van de Putte. If we could bring them
17 into the chamber. And we will have a timer that will
18 be 10 minutes.

19 Sen. Van de Putte, I believe you had a
20 witness that you needed a little bit longer time. Is
21 this the witness?

22 Okay. And, members, again I'll state
23 again, we will not recognize anybody for a question
24 during the 10-minute period of time for layout.
25 Thereafter, we will allow questions. I'll remind you

1 that we have the public testimony that will follow
2 after the invited testimony, so be efficient. But,
3 you know, you're entitled to ask your questions.

4 So is Mr. von Spakovsky in the chamber?

5 And for the sake of time, if we could go
6 ahead and bring Tova Andrea Wang into the chamber.

7 Is this -- who is this?

8 (Off-the-record discussion)

9 SEN. DUNCAN: Mr. von Spakovsky.

10 Okay. She will go second.

11 Okay, Mr. von Spakovsky, you're
12 recognized. You need to state your name and who you
13 represent. I believe you have turned in a witness
14 affirmation card. You have 10 minutes. That will be
15 strictly enforced. And you have a timer there in
16 front of you. You can begin.

17 (Proceedings continued in Volume 1B)

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TRANSCRIPT OF PROCEEDINGS BEFORE
THE SENATE OF THE STATE OF TEXAS
EIGHTY-FIRST LEGISLATURE
(COMMITTEE OF THE WHOLE SENATE)
AUSTIN, TEXAS

IN RE: §
§
CONSIDERATION OF §
SENATE BILL 362 §

COMMITTEE OF THE WHOLE SENATE

TUESDAY, MARCH 10, 2009

BE IT REMEMBERED THAT AT 5:50 p..m., on
Tuesday, the 10th day of March 2009, the above-
entitled matter continued at the Texas State Capitol
Senate Chamber, Austin, Texas, before the Committee of
the Whole Senate; and the following proceedings were
reported by Aloma J. Kennedy, a Certified Shorthand
Reporter of:

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P R O C E E D I N G S

TUESDAY, MAY 10, 2009

(5:50 p.m.)

INVITED TESTIMONYTESTIMONY BY HANS VON SPAKOVSKY

MR. von SPAKOVSKY: Thank you,
Mr. Chairman, senators. I appreciate the invitation
to testify here today. My name is Hans von Spakovsky.
I'm a legal scholar at the Heritage Foundation,
although the opinions here today are my own.

Just by background, I've got extensive
experience in voting and election issues. I spent
four years at the Department of Justice as a voting
counsel. I spent two years on the Federal Election
Commission. I also spent five years as a member of a
county election board in Atlanta, Georgia, in Fulton
County, which is the largest county in the state, and
it's a county that's about half African-American.

Guaranteeing the integrity of elections
requires having security throughout the entire
election process, from the voter registration to
voting in the polls on Election Day to counting the
ballots. I doubt any of you here would think it would
be a good idea to give worldwide Internet access to
the computers that are in a county election department

1 that tabulate the vote.

2 Requiring someone to authenticate their
3 identity in the polling place is part and parcel of
4 the same kind of security. Every illegal vote steals
5 a vote from a legitimate voter. And voter ID doesn't
6 just prevent impersonation fraud at the polls, it also
7 can prevent people from voting under fictitious voter
8 registrations and also double voting by individuals
9 who are registered in more than one state.

10 Voter fraud does exist, and criminal
11 penalties imposed after the fact are not sufficient to
12 protect against it. That claim was, in fact, raised
13 in the Indiana case, and the Supreme Court said that
14 despite such criminal penalties, there are flagrant
15 examples of such fraud that have been documented
16 throughout this nation's history by respected
17 historians and journalists. They not only demonstrate
18 the risk of voter fraud is real, but it could affect
19 the outcome of a close election.

20 You've had some questions about why have
21 there not been more prosecutions of voter
22 impersonation. Well, as the Seventh circuit said in
23 the Indiana case, it's hard to prosecute something
24 when you don't have the tool to detect it, voter ID.

25 However, if you want a good example of

1 this, I wrote a paper last year for the Heritage
2 Foundation that detailed a publicly released state
3 grand jury report in New York City, 1984, which
4 detailed a successful and undetected 14-year
5 conspiracy in which impersonation fraud was carried on
6 at the poll and thousands of fraudulent ballots were
7 cast in not just state legislative primary elections
8 but also in congressional elections.

9 Crews of from five to eight people were
10 recruited and sent from polling place to polling place
11 where they voted in the names of legitimate voters,
12 people who were dead but still on the registration
13 lists, individuals who had moved and also under the
14 names of fictitious voter registration names that had
15 been successfully registered.

16 According to the grand jury, the advent
17 of mail-in registration was a key factor in this
18 fraud. It could have been easily stopped if New York
19 had had voter ID. In recent elections, as you know,
20 thousands of fraudulent voter registration forms were
21 detected by election officials. But given the minimal
22 screening efforts in many election jurisdictions,
23 there is no way to know how many others slipped
24 through. In states with ID, election officials --
25 without ID, election officials have no way to prevent

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1 bogus votes from being cast.

2 The problem of double voting -- well,
3 I'll give you an example of that. In the Indiana
4 Supreme Court case, the League of Women Voters filed
5 an amicus brief against the law. And in it they
6 illustrated an Indiana voter, an elderly woman who
7 they said had had problems voting. The local paper
8 went and interviewed her.

9 The reason she had had problems voting,
10 she tried to use a Florida driver's license when she
11 went to her polling place in Indiana. Not only did
12 she have a Florida driver's license, she was
13 registered to vote in Florida. In fact, she owned a
14 home in Florida and had claimed a homestead exemption
15 which, as you know, you can only do if you are a
16 resident of the state. So the law actually worked to
17 prevent someone who could have voted twice without
18 detection.

19 I don't mean to single out Texas. But
20 just like Indiana, New York and Illinois, Texas has a
21 long and unfortunate history of voter fraud. In the
22 late 1800's, for example, Harrison County was so
23 infamous that the phrase "Harrison County methods"
24 became synonymous with election fraud. Box 13 has
25 already been mentioned. The point is that there are

1 individuals who are willing to break the law to try to
2 steal an election.

3 I don't claim that there is massive
4 voter fraud in Texas or elsewhere. In fact, I'm a
5 former election official, and I think most of our
6 elections are run pretty well. But the potential for
7 abuse exists, and there are many close elections that
8 could turn on just a handful of votes. And there are
9 enough incidents of voter fraud to make it very clear
10 we should take steps to stop that.

11 Now, the biggest thing I've heard today
12 is that voter ID will suppress the votes of voters,
13 particularly the poor or the elderly. That is untrue.
14 Social science research shows that that's not the
15 case. And the actual election results in the two
16 states with the strictest voter ID in the country show
17 that is not true.

18 The Heritage Foundation released a study
19 in September 2007 that looked at voter turnout in
20 every state in the country in the 2004 election,
21 comparing those states who had voter ID to those
22 states who do not. They found that voter ID laws do
23 not reduce the turnout of voters, including African-
24 Americans and Hispanics, that those voters were just
25 as likely to vote in states with ID as in states where

1 just their name was asked.

2 A study by professors at the University
3 of Delaware and Nebraska-Lincoln examined data from
4 the 2000, 2002, 2004 and 2006 elections. The study
5 found that voter ID laws do not affect turnout,
6 including across racial lines, ethnic lines and
7 socioeconomic lines. The study concluded -- and I'll
8 give you their quote -- the "concerns about voter ID
9 laws affecting turnout are much ado about nothing."

10 A professor at MIT, as part of the
11 CalTech Voting Project, did a survey of 36,000
12 individuals to see what their Election Day experience
13 was like. Overwhelming support for voter ID. Only 23
14 individuals who had a problem voting because of voter
15 ID. And there was no indication in the survey if they
16 were actually eligible voters.

17 A lot of talk has been here about
18 election results in Georgia and Indiana. In Georgia,
19 there was record turnout in the 2008 presidential
20 primary after the voter ID law went into effect, a
21 million more voters than in 2004, when there was no
22 voter ID law in effect.

23 The number of African-Americans voting
24 in the 2008 presidential primary doubled from 2004
25 when there was no voter ID law in effect. In fact,

1 there were 100,000 more votes in the Democratic
2 Primary in Georgia than in the Republican Primary.
3 The general election in Georgia, one of the strictest
4 voter ID laws in the country, largest turnout in its
5 history. Democratic turnout was up 6.1 percentage
6 points from the 2004 election when there was no voter
7 ID. Overall turnout in Georgia was 6.7 percentage
8 points higher than in 2004, the second highest
9 increase of any state in the country.

10 The Georgia law has been upheld in every
11 federal and state court. And, in fact, the Georgia
12 judge, who is a former Democratic legislator appointed
13 by Jimmy Carter, pointed out that in two years of
14 litigation, none of the organizations who sued,
15 including the NAACP, could come up with a single
16 witness, a single individual who could not vote
17 because of the voter ID requirement.

18 In Indiana, Democratic presidential
19 preference primary last year, Democratic turnout
20 quadrupled from the 2004 election. In fact, it was up
21 8.32 percentage points from 2004, the largest increase
22 in Democratic turnout of any state in the country.
23 And the Supreme Court said, "Indiana has the strictest
24 voter ID law in the country."

25 We are only one of about 100 democracies

1 that do not require photo ID. Our southern neighbor,
2 Mexico, which has a much larger population in poverty,
3 requires both a photo ID and a thumb print when people
4 go to vote. Since they put that provision in, in the
5 mid-1990s, turnout has increased in their elections.

6 Requiring voters to authenticate their
7 identity is a perfectly reasonable and easily met
8 requirement. It's supported by the vast majority of
9 voters. All the polling data shows that. And it
10 protects the integrity and reliability of the
11 electoral process, as the Supreme Court said, and it
12 also maintains the confidence of individuals in the
13 security of their elections.

14 And I'm done, Mr. Chairman.

15 SEN. DUNCAN: Thank you, Mr. von
16 Spakovsky. Before I entertain any questions, you have
17 written testimony. Do you wish to submit that into
18 the record?

19 MR. von SPAKOVSKY: I would like to
20 submit it. I believe I gave it to the Clerk, Mr.
21 Chairman.

22 (Exhibit No. 14 marked and admitted)

23 SEN. DUNCAN: Okay. We have it marked
24 as Exhibit 14.

25 Members, are there any questions for

1 Mr. Von Spakovsky?

2 Sen West.

3 SEN. WEST: Will we be asking questions
4 from the chair or standing up?

5 SEN. DUNCAN: Standing up.

6 **QUESTIONS FROM SENATE FLOOR**

7 SEN. WEST: Okay. Sir, let's talk about
8 your background. We've met before, back in 2003 I
9 think it was. As it relates -- are you coming as a
10 neutral and detached witness or have some sort of bias
11 one way or the other for this particular issue?

12 MR. von SPAKOVSKY: I'm not quite sure
13 how to answer that question.

14 SEN. WEST: Well, let me ask the
15 question this way: You are a former Republican chair,
16 are you not?

17 MR. von SPAKOVSKY: I was a county party
18 Republican chair over 10 years ago.

19 SEN. WEST: Okay. Have you authored
20 studies or position papers on requiring voter IDs at
21 polling locations?

22 MR. von SPAKOVSKY: I have. In fact, I
23 wrote an article for a Texas Law Review on it.

24 SEN. WEST: Have you authored articles
25 on requiring the verification of social security

1 numbers of voters?

2 MR. von SPAKOVSKY: I have. And, in
3 fact, that's now a federal requirement under the Help
4 America Vote Act.

5 SEN. WEST: Have you authored articles
6 on eliminating no-fault absentee voting?

7 MR. von SPAKOVSKY: I believe I have,
8 yes.

9 SEN. WEST: And what's the rationale --
10 what is your rationale for no-fault absentee voting?
11 And let's define it first of all. As I understand
12 no-fault absentee voting, that basically means that a
13 person should not be able to give any reason not to --
14 any reason in order to cast an absentee ballot. So a
15 person who may very well have business outside of the
16 county on Election Day, if you had your way, they
17 would not be able to vote. Correct?

18 MR. von SPAKOVSKY: That's incorrect,
19 Senator.

20 SEN. WEST: Okay. Then what is the
21 elimination of no-fault absentee voting?

22 MR. von SPAKOVSKY: There are some
23 states -- in most states, you have to have a reason to
24 vote absentee: You're disabled, you're elderly,
25 you're going to be out of town on business. I

1 completely agree with those, plus the fact if you're a
2 military voter. There are some states where you don't
3 have to have any reason to vote absentee.

4 SEN. WEST: Is Texas one of those
5 states?

6 MR. von SPAKOVSKY: I'm not sure what
7 the rule is in Texas.

8 SEN. WEST: If we were, then you would
9 want to eliminate that. Right?

10 MR. von SPAKOVSKY: Well, there are two
11 things there, Senator. The first is that absentee
12 ballot fraud is one of the biggest sources of voter
13 fraud. In fact, I've written a paper about that.
14 And, second, there's more than one study -- in fact,
15 one by the Center For the Study of the American
16 Electorate which indicates that states that have put
17 in no-fault absentee balloting, in fact, it has
18 possibly hurt the turnout of their voters.

19 SEN. WEST: In terms of other articles
20 that you have worked on, the white papers that you
21 have written eliminating motor voter registration --

22 MR. von SPAKOVSKY: That's incorrect.

23 SEN. WEST: Okay. You're not for
24 eliminating motor voter registration?

25 MR. von SPAKOVSKY: I think there are

1 problems with mail-in voter registration, but I also
2 think that the provisions of motor voter which require
3 you to be able to get registered to vote when you go
4 get your driver's license or when you go to a public
5 assistance office, I think those are very good
6 provisions.

7 SEN. WEST: What about the requirement
8 of two witnesses on a notary to sign an absentee
9 ballot, are you for? Have you advocated that or what?

10 MR. von SPAKOVSKY: I believe that
11 because of the problems with absentee ballots and
12 voter fraud, that having either a witness or a notary
13 for an absentee ballot is a good idea.

14 SEN. WEST: You have indicated that
15 there's numerous studies that show that there has been
16 no impact, negative impact on the minority vote in
17 several states, and you've alluded to some 2008
18 elections. Let me put a pin in that for a second.
19 Have you been the author of any of the studies that
20 you have mentioned as relates to voter suppression?

21 MR. von SPAKOVSKY: To voter
22 suppression?

23 SEN. WEST: Right -- oh, I'm sorry. I
24 should not have said that.

25 MR. von SPAKOVSKY: I --

1 SEN. WEST: I should not have said voter
2 suppression. I apologize. Have you been the author
3 of any studies that deal with the impact of voter ID
4 on minority votes?

5 MR. von SPAKOVSKY: Yes.

6 SEN. WEST: And which studies have those
7 been?

8 MR. von SPAKOVSKY: I wrote a paper that
9 looked at the State of Georgia and some other states
10 that had voter ID laws. And I looked at turnout of
11 African-American voters, both before the law went into
12 effect and after the law went into effect.

13 SEN. WEST: In the State of Georgia?

14 MR. von SPAKOVSKY: And, yes, I looked
15 at the State of Georgia.

16 SEN. WEST: For what year -- years?

17 MR. von SPAKOVSKY: I started with the
18 first voter ID law that went into effect in Georgia in
19 1999, which was then amended later on, and I looked at
20 the effects of all of those laws.

21 SEN. WEST: Okay. Did you also look at
22 2008?

23 MR. von SPAKOVSKY: The paper was
24 written before the 2008 election.

25 SEN. WEST: Have you looked at any --

1 have you been the author of any studies that looked at
2 the 2008 election?

3 MR. von SPAKOVSKY: I've written several
4 articles about that, yes, sir.

5 SEN. WEST: As relates to those
6 articles, did you conclude that -- was that in the
7 State of Indiana or Georgia or what?

8 MR. von SPAKOVSKY: In some of the
9 articles I've written, I've mentioned election results
10 in both Indiana and in Georgia.

11 SEN. WEST: And so it's your testimony
12 that voter ID had no negative impact on the minority
13 vote in either one of those states in 2008?

14 MR. von SPAKOVSKY: That's what the
15 facts and figures from the election show.

16 SEN. WEST: Did you take into
17 consideration who the candidates were at that time in
18 Indiana and Georgia. And --

19 MR. von SPAKOVSKY: Yes, Senator.

20 SEN. WEST: -- did that have an impact?
21 Were you able to check out the influence of President
22 Barack Obama being on the ballot?

23 MR. von SPAKOVSKY: Senator, turnout was
24 up all over the country, particularly in the minority
25 community, because of Sen. Barack Obama. The point,

1 however, is that the two states with the strictest
2 voter ID laws in the country had turnout that was
3 records and ahead of other states where turnout was
4 also up, because of Barack Obama being on the ballot;
5 and, yet, those states don't have voter ID. If the
6 claim, which I know you believe is true, that voter
7 ID --

8 SEN. WEST: You don't know what I
9 believe, first of all.

10 MR. von SPAKOVSKY: If people are going
11 to claim that voter ID suppresses the vote of minority
12 voters, then why would, in Georgia, they have a record
13 turnout, for example, in the Democratic turnout where,
14 you know, 95 percent of African-Americans there vote,
15 in a state where the African-American population is
16 about 26-27 percent; and, yet, they have record
17 turnout. If, in fact, voter ID --

18 SEN. WEST: Let me ask you -- let me
19 finish --

20 MR. von SPAKOVSKY: May I answer the
21 question?

22 SEN. WEST: Well, hold on. Let me --
23 answer my question. I would appreciate it. All
24 right. The question is real simple. Did you consider
25 the influence -- in coming to the conclusion that you

1 did on the studies, did you consider the influence
2 that President Barack Obama had on energizing the
3 Democratic base in both of those states?

4 MR. von SPAKOVSKY: Yes, sir, I did.

5 SEN. WEST: And were you able to factor
6 that out before you came up with your conclusions, by
7 using a valid statistical model? And, if so, what was
8 that statistical model?

9 MR. von SPAKOVSKY: I did not do a
10 statistical analysis. I used figures put out by
11 Curtis Gans at American University who has election
12 return figure from every state in the country.

13 SEN. WEST: So your study -- and I have
14 not read your study. So your study was a compilation
15 of election results? You --

16 MR. von SPAKOVSKY: I wrote an article
17 in which I looked at the election results all around
18 the country. And those election results, as reported
19 by American University, indicated that Indiana, for
20 example, had the largest increase in Democratic
21 turnout of any state in the country from the --

22 SEN. WEST: I understand that; I
23 understand exactly what you're saying. But I'm just
24 trying to make certain I understand the study. You
25 took the results of the elections and then used that

1 in order to craft, analyze it and then craft a
2 conclusion based on those election results. Is that
3 what you're telling me?

4 MR. von SPAKOVSKY: Yes, sir.

5 SEN. WEST: Okay. So how did you factor
6 in the influence that then Sen. Barack Obama had on
7 energizing the election base?

8 MR. von SPAKOVSKY: The point, Senator,
9 is that the State of Indiana has the strictest photo
10 ID law in the country; and, yet, they had the largest
11 increase in turnout in the Democratic primary of any
12 state in the country. So if, in fact, that photo ID
13 laws was going to suppress the vote of minority
14 voters, they would not have had such a huge increase
15 in that state.

16 SEN. WEST: So you have not had an
17 opportunity to look at it in an election where the
18 Democratic base isn't as energized as it was with
19 Barack Obama to determine whether or not it has any
20 impact?

21 MR. von SPAKOVSKY: Senator, I think, in
22 fact, one of the studies that I mentioned, which there
23 was a study that was done in Missouri looking at the
24 2006 election which, as you know, was an off-year
25 election. Barack Obama was not on the ballot. And,

1 in fact, in 2006, when the photo ID law in Indiana was
2 in -- was finally in effect, not only did turnout go
3 up two percent, but the only statistically
4 significant -- let me find this. Here we go.

5 In fact, this is a quote from the study.
6 "There is no evidence that counties with higher
7 percentages of minority, poor, elderly or less
8 educated populations suffered any reduction in voter
9 turnout." This was in 2006. In fact, quote, "The
10 only consistent and statistically significant impact
11 of photo ID in Indiana is to increase voter turnout in
12 counties with a greater percentage of Democrats
13 relative to other counties."

14 SEN. WEST: Now, let me ask you this:
15 Isn't it a fair statement that there are those in
16 academia that disagree with your conclusions?

17 MR. von SPAKOVSKY: There may be, yes.

18 SEN. WEST: You don't know of any?

19 MR. von SPAKOVSKY: There may be some
20 studies that do. Most of the studies say that it
21 doesn't --

22 SEN. WEST: So there are those that
23 disagrees with your conclusions. Is that correct?

24 MR. von SPAKOVSKY: I'm sure there's
25 always people that --

1 SEN. WEST: Are there some social
2 scientists that disagree with your conclusions, sir?

3 MR. von SPAKOVSKY: You'll have to look
4 that up, Senator.

5 SEN. WEST: Okay.

6 SEN. DUNCAN: Senator, y'all are talking
7 over each other a little bit. So if you could allow
8 the witness --

9 SEN. WEST: And I apologize.

10 SEN. DUNCAN: -- room before you --

11 SEN. WEST: We've got two lawyers up
12 here. Yes, sir.

13 All right. So there are individuals of
14 noted reputations in academia that disagree with your
15 conclusions?

16 MR. von SPAKOVSKY: Senator, I have
17 spoken about and testified about the various studies
18 that I have seen, which I think are valid studies
19 which show that there is no effect.

20 SEN. WEST: Sir, that was not the
21 question. The question was, is do you know of persons
22 in academia that disagree with your conclusions?

23 MR. von SPAKOVSKY: There may be, yes.

24 SEN. WEST: So the answer to the
25 question is yes, there are persons that disagrees with

1 your conclusions?

2 MR. von SPAKOVSKY: I'm sure there are.

3 SEN. WEST: Okay. Very good. Now, as
4 it relates to the issue of retrogression, help me walk
5 through this. Which should we be considering in terms
6 of whether or not this particular piece of legislation
7 is, in fact -- you have been at the Department of
8 Justice. Correct?

9 MR. von SPAKOVSKY: Yes, sir. I worked
10 there for four years as a career lawyer.

11 SEN. WEST: Okay. You have had to
12 overrule some of the professional staff sometimes when
13 they come to their different conclusions than you
14 otherwise came to. Is that correct?

15 MR. von SPAKOVSKY: I did not overrule
16 anyone. I made recommendations to the Assistant
17 Attorney General on matters.

18 SEN. WEST: You've had to make
19 recommendations counter to recommendations made by
20 you -- made to you by staff that was reporting to you,
21 though. Isn't that correct?

22 MR. von SPAKOVSKY: Yes.

23 SEN. WEST: Okay. And some of it has
24 been in the area of voters' right -- most -- oh, all
25 of it has been in the area of votes' rights. Is that

1 correct -- specifically Section V?

2 MR. von SPAKOVSKY: Sir, that is
3 incorrect. I was the voting counsel. All I worked on
4 were voting issues.

5 SEN. WEST: That's exactly right. Okay.
6 Now, in that capacity, what would you advise us -- I'm
7 going to say take your hat off as a Republican, take
8 your hat off as any affiliation law. What specific
9 advice would you give this body as it relates to
10 analyzing the legislation before us?

11 MR. von SPAKOVSKY: Well, under
12 Section 5, you use the retrogression standard, which
13 means that you can't do something that's going to have
14 a disparate impact on minority voters. And, you know,
15 everything I've seen, certainly based on the Georgia
16 legislation, which is stricter than this, there is no
17 disparate impact.

18 SEN. WEST: And so there is no disparate
19 impact. Is that what you're saying --

20 MR. von SPAKOVSKY: Correct.

21 SEN. WEST: -- based on the legislation?
22 Okay. Now, let me ask you this: What have you seen
23 that leads you to that conclusion?

24 MR. von SPAKOVSKY: The Georgia bill --
25 the Georgia legislation, in fact, is stricter

1 legislation. It has fewer IDs that meet the
2 requirements of the law. That law did not have a
3 retrogressive impact. In fact, the election results
4 show that clearly. Arizona is another state that put
5 in a voter ID law. It also was pre-cleared by the
6 Justice Department. And it also was recently upheld
7 by a federal district court who said that it did not
8 violate any voting right statutes and was perfectly
9 constitutional.

10 SEN. WEST: So then your comment about
11 what we're doing here is not going to be retrogressive
12 is based on the Georgia statute. Is that what you're
13 saying?

14 MR. von SPAKOVSKY: It's based on my
15 experience in this area, all the studies I've seen,
16 the results of elections, that this statute is not
17 going to be shown to be retrogressive.

18 SEN. WEST: Let me ask you this: Some
19 of the career -- help us understand the Justice
20 Department, specifically the voting rights section.
21 You have career employees there. Right?

22 MR. von SPAKOVSKY: Yes. I was a career
23 employee there.

24 SEN. WEST: Okay. And are some of those
25 employees still there that were with you at the time

1 that you were there?

2 MR. von SPAKOVSKY: I'm sure there are,
3 yes.

4 SEN. WEST: Okay. Some of those
5 employees that you've had to overrule their analysis,
6 are they still there?

7 MR. von SPAKOVSKY: I don't know. I
8 haven't worked there since 2005, so I really don't
9 know who is still there.

10 SEN. WEST: Okay. All right. But it's
11 a different Justice Department -- right? -- Department
12 of Justice. Right?

13 MR. von SPAKOVSKY: The career staff at
14 the Justice Department -- the Justice Department is
15 made up of around 99 percent career staff. Political
16 appointees are a very small percentage. So from year-
17 to-year, administration-to-administration, the career
18 staff, with some turnover, pretty much stays the same.

19 SEN. WEST: How long were you in the
20 Department of Justice?

21 MR. von SPAKOVSKY: Four years.

22 SEN. WEST: Four years. When did you go
23 into the Department of Justice?

24 MR. von SPAKOVSKY: 2001.

25 SEN. WEST: And what position was that?

1 MR. von SPAKOVSKY: I was a trial
2 attorney in the Civil Rights Division.

3 SEN. WEST: In the Civil Rights
4 Division. Okay. Thank you very much, sir.

5 SEN. DUNCAN: Sen. Shapleigh.

6 SEN. SHAPLEIGH: Thank you, Mr. Chair.

7 Mr. Spakovsky, I would like to go over
8 some testimony that you just laid out with your
9 handout here that we have. I'm looking at Page 3
10 specifically. And when you're talking about Texas, as
11 far as I can tell, in connection with the problem of
12 voter fraud here, you're saying in the late 1800's,
13 Harris County was infamous for massive election fraud
14 such that "Harrison County Methods" became synonymous
15 with election fraud, and then Ballot Box 13 in Lyndon
16 Johnson's 1948 race, to reports of illegal aliens in
17 Bexar County. What reports are you referring to on
18 illegal aliens in Bexar County?

19 MR. von SPAKOVSKY: There were newspaper
20 reports indicating that -- I believe the clerk there
21 had found individuals who were not U.S. citizens who
22 had both registered and voted in elections there.

23 SEN. SHAPLEIGH: And were any cases
24 brought in connection with those newspaper reports, to
25 your knowledge?

1 MR. von SPAKOVSKY: I don't know,
2 Senator.

3 SEN. SHAPLEIGH: So what you represent
4 here as illegal aliens voting and risking criminal
5 prosecution, you're telling us now you don't know
6 whether anything came of that at all?

7 MR. von SPAKOVSKY: I don't know what
8 the end results were of the investigations there.

9 SEN. SHAPLEIGH: Do you know anything
10 else about Texas voter fraud allegations, other than
11 what you've laid out in your report --

12 MR. von SPAKOVSKY: I believe one of
13 your -- I've read testimony by a Mr. Bettencourt who I
14 believe was in -- may have been in Harris County who
15 testified at a House committee meeting hearing in
16 Washington about finding individuals who were not U.S.
17 citizens who had registered and voted in elections in
18 his county.

19 SEN. SHAPLEIGH: Are you aware of the
20 investigation done here by the Attorney General of the
21 State of Texas in 2006?

22 MR. von SPAKOVSKY: No, sir, I have not
23 done a detailed study of that.

24 SEN. SHAPLEIGH: Would it surprise you,
25 with what you're saying in this report, that not a

1 single prosecution brought in this state would have
2 been solved by this voter ID; that is, mail-in ballots
3 and other issues were the issues at the root of these
4 indictments and not a single case has been brought in
5 the State of Texas on vote fraud that photo ID would
6 solve? Would that surprise you?

7 MR. von SPAKOVSKY: No. As I said,
8 Senator -- and I refer you again to the Supreme Court
9 case -- as they pointed out, it's very hard to detect
10 a problem like that if you don't have the tool
11 necessary to detect it, which is photo ID.

12 SEN. SHAPLEIGH: Let me go to your
13 career. You come here from The Heritage Foundation.
14 Is that correct?

15 MR. von SPAKOVSKY: That's correct, sir.

16 SEN. SHAPLEIGH: And would you say
17 you're here as a fair and balanced witness whose
18 testimony is designed to move us to a non-partisan
19 correct decision that would serve the State of Texas
20 in this matter?

21 MR. von SPAKOVSKY: As I said before,
22 I'm here testifying on my own behalf, not on behalf of
23 The Heritage Foundation. And I think all of the
24 evidence on photo ID indicates that it should be a
25 bipartisan solution, because not only can it prevent

1 voter fraud but it does not hurt turnout.

2 And, in fact, I believe in Indiana, for
3 example -- again, the state with the strictest photo
4 ID law in the country -- they for the first time in I
5 don't know how many decades actually voted for a
6 Democratic presidential candidate. So it clearly had
7 no effect and it may have helped the Democratic Party
8 in that state.

9 SEN. SHAPLEIGH: So in connection with
10 your reputation as you come here, you're coming, in
11 your words, as a fair and balanced witness?

12 MR. von SPAKOVSKY: I believe so,
13 Senator, yes.

14 SEN. SHAPLEIGH: Who is Joseph Rich?

15 MR. von SPAKOVSKY: He was former Chief
16 of the Voting Section who now works for the Lawyers'
17 Committee for Civil Rights, which is a liberal
18 advocacy organization.

19 SEN. SHAPLEIGH: So he was the Chief of
20 the Voting section. He was a career, as you describe
21 it, attorney in the Justice Department and Chief of
22 the Voting Section from 1999 to 2005. Is that
23 correct?

24 MR. von SPAKOVSKY: He was a career
25 lawyer, as I was a career lawyer at the section.

1 SEN. SHAPLEIGH: Who is Robert Kengle?

2 MR. von SPAKOVSKY: He is also a former
3 career lawyer.

4 SEN. SHAPLEIGH: And he was Deputy Chief
5 of the Voting Section, 1999 to 2005. Correct?

6 MR. von SPAKOVSKY: I don't remember the
7 exact years. I know he was a career lawyer there.

8 SEN. SHAPLEIGH: And Jon Greenbaum,
9 Senior Trial Attorney, Voting Section, 1997 to 2003,
10 your colleague when you were at the Department of
11 Justice. Correct?

12 MR. von SPAKOVSKY: Mr. Greenbaum was a
13 lawyer for the Lawyers' Committee for Civil Rights and
14 was the lawyer who brought the lawsuit in Georgia
15 against the photo ID law which was eventually
16 completely dismissed by the federal court there.

17 SEN. SHAPLEIGH: But he was your
18 colleague in the Department of Justice. "Yes" or
19 "No"?

20 MR. von SPAKOVSKY: He was a trial
21 lawyer there.

22 SEN. SHAPLEIGH: When you were there?

23 MR. von SPAKOVSKY: At some point, yes.

24 SEN. SHAPLEIGH: And David J. Becker,
25 Senior Trial Attorney, Voting Section, 1998 to 2005,

1 your colleague at the Department of Justice. "Yes" or
2 "No"?

3 MR. von SPAKOVSKY: He was a trial
4 attorney there, too.

5 SEN. SHAPLEIGH: Bruce Adelson, Senior
6 Trial Attorney, Voting Section, 2000 to 2005, your
7 colleague at the Department of Justice?

8 MR. von SPAKOVSKY: He was a trial
9 attorney there, yes.

10 SEN. SHAPLEIGH: Toby Moore, Voting
11 Section, 2000 to 2006, Political Geographer,
12 Department of Justice?

13 MR. von SPAKOVSKY: Yes.

14 SEN. SHAPLEIGH: Now, you were nominated
15 to serve, I believe, for the Federal Election
16 Commission, were you not?

17 MR. von SPAKOVSKY: I was.

18 SEN. SHAPLEIGH: Did these attorneys
19 deliver a letter to the Chairman of that committee,
20 Dianne Feinstein, in connection with your nomination?

21 MR. von SPAKOVSKY: They did, Senator.
22 And I wrote a response to that letter which is on file
23 at the committee, as is their letter, because, frankly
24 their letter was filled with misrepresentations, and
25 it had a lot of things in it that were not true and

1 which were proveably not true about the administration
2 of the Civil Rights Division.

3 SEN. SHAPLEIGH: Well, if you have that
4 letter, we would I think at this point like to see it,
5 because I'm about to go through their letter where
6 one, two, three, four, five, six of your colleagues
7 signed a letter -- I think this is an unprecedented
8 act in the Department of Justice to sign a letter on a
9 nomination of a colleague that works with them in the
10 Voting Section of the Department of Justice. And I
11 want to quote from this.

12 "We are deeply disturbed that the
13 tradition of fair and vigorous enforcement of this
14 nation's civil rights laws and the reputation for
15 expertise and professionalism of the Division and the
16 Department has been tarnished by partisanship. Over
17 the past five years, the priorities of the Voting
18 Section have shifted from its historic mission to
19 enforce the nation's civil rights laws without regard
20 to politics, to pursuing an agenda which placed the
21 highest priority on the partisan political goals of
22 the political appointees who supervised the Section.
23 We write to urge you not to reward one of the
24 architects of that unprecedented and destructive
25 change with another critical position enforcing our

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1 country's election laws."

2 Were they talking about you in this
3 letter?

4 MR. von SPAKOVSKY: Senator, that letter
5 was full of misrepresentations and, frankly, outright
6 lies.

7 (Simultaneous discussion)

8 MR. von SPAKOVSKY: Senator, I'll be
9 glad to talk to you about voter ID. But, you know,
10 I'm a lawyer. And one thing I have found in the
11 courtroom is that, quite frankly, when the lawyer on
12 the other side has neither the facts nor the law on
13 their side, that's when they usually resort to
14 personal attacks.

15 (Applause)

16 SEN. DUNCAN: (Raps gavel)

17 SEN. SHAPLEIGH: Mr. von Spakovsky --
18 and, Mr. Chair, I would ask if we could have a
19 direction to the witness to answer the questions
20 presented. The simple question was, "Is the person
21 they're referring to in this letter you?"

22 MR. von SPAKOVSKY: And as I told you,
23 Senator, I wrote a full response to that letter
24 pointing out all of the inaccuracies and
25 misrepresentations in that letter.

1 SEN. SHAPLEIGH: So this is about you,
2 this is directed at your behavior in that Department
3 of Justice? Does it say that?

4 MR. von SPAKOVSKY: It is a letter about
5 a fictional person that they say is me but is not.

6 SEN. SHAPLEIGH: It is a fictional
7 person that they worked with for four years, but it's
8 not you. Is that what you're saying?

9 MR. von SPAKOVSKY: I'm saying, Senator,
10 that that letter was written by individuals who now
11 work for very liberal advocacy groups, one of them,
12 for example, working for a group that lost in Federal
13 Court in Georgia when it sued over voter ID law that
14 they didn't like. And, you know, if that's a
15 reflection of his legal judgment on matters like that,
16 I think that says a lot about the inaccuracies in that
17 letter.

18 SEN. SHAPLEIGH: Well, I'm just going to
19 take it that they're talking about you. "After
20 careful review" -- I'm now on Page 3 -- "of the
21 Georgia voter ID law, career staff responsible for the
22 review came to a near unanimous decision, consistent
23 with the precedent established by the Department in
24 previous reviews; that the Georgia provision would
25 negatively affect minority voting strength. Four of

1 the five career professionals on the review team
2 agreed. The one who did not had [almost] no
3 experience in enforcing §5 and had been hired only
4 weeks before the review began through the political
5 hiring process described" in this letter. "The
6 recommendation to object to the law, detailed in a
7 memo exceeding 50 pages was submitted on August 25,
8 2005. The next day, Georgia submitted corrected data
9 on the number of individuals who had state-issued
10 photo identification. The career review team was
11 prevented by Mr. von Spakovsky from analyzing this
12 data and incorporating the corrected data into their
13 analysis. Instead, there was an unnecessary rush to
14 judgment and the law was summarily precleared on
15 August" the 25th, the day after their monologue was
16 delivered to you. The law was pre-cleared by you the
17 same day the corrected data had been submitted.
18 "Subsequent analysis of this data by a Georgia
19 political scientist revealed that hundreds of
20 thousands of voters did not have the required voter
21 ID, a disproportion number of whom were poor, elderly
22 and, most importantly for the Voting Rights Act
23 review, minorities. In short, this data provided
24 further evidentiary support for the objection
25 recommended by the professional staff. Subsequently,

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1 a federal court in Georgia found that this law
2 violated the poll tax provision of the Constitution."

3 Are they referring to actions taken by
4 you on August the 25th and 26th of 2005?

5 MR. von SPAKOVSKY: Senator, there are
6 so many facts wrong and so many misrepresentations in
7 that letter, and you've also gotten a lot of other
8 facts incorrect, that it would take me at least
9 probably half an hour to answer everything you've got
10 wrong in that case, the more important of which is
11 that the career Chief of the Voting Section who was a
12 30-year veteran of the Department of Justice, someone
13 who had been enforcing the Voting Rights Act and
14 filing suits in southern states like Mississippi and
15 Alabama for 30 years, sent a recommendation that said
16 that the law should be approved, that there was no
17 evidence of retrogression.

18 And I would be happy to give you some of
19 the data, Senator. For example, the Department of
20 Driver Services, which is I believe the same as the
21 department here that gives your driver's license, has
22 showed that there were 6.5 -- 6.4 million individuals
23 in Georgia who had driver's licenses and photo IDs.
24 There were only 4.5 million registered voters.

25 That department had racial data. For

1 60 percent of the cardholders, they found that
2 28 percent of the individuals who held driver's
3 licenses were African-American, which was higher than
4 the black percentage of the voting age population in
5 Georgia, indicating that African-Americans in Georgia
6 held driver's licenses at a slightly rate than white
7 Georgians.

8 They also submitted student photo ID
9 information. The student photo ID issued by a state
10 university is an accepted ID under the law. The
11 information from the state colleges showed that black
12 students represented 26.8 percent of public college
13 students in the state, which was slightly more than
14 their share of the voting age population.

15 Finally, the census data that was
16 submitted showed that 19.4 percent of African-
17 Americans in Georgia worked for the government, either
18 at a local, state or federal level, while only 14
19 percent of whites did. Government-issued employee IDs
20 were also acceptable. So all of the information
21 submitted indicated that African-Americans in the
22 State of Georgia had voter ID at the same rates or, in
23 fact, slightly higher than white Georgians.

24 The election results in the state since
25 then showed that that was, in fact, true. There was a

1 preliminary injunction issued in the federal lawsuit
2 that was filed. If you read that case carefully, you
3 will find that the Judge said that he made no finding
4 and was not basing his preliminary injunction on the
5 Voting Rights Act because there was no racial
6 discrimination proven in the case.

7 He did find a constitutional violation.
8 But the Supreme Court said in a case called Reno vs.
9 Bossier Parish some years ago that when the Justice
10 Department is reviewing a Section 5 submission, they
11 can only use the voting rights retrogression standard.
12 They cannot refuse to pre-clear a law because of a
13 constitutional violation. And as for any
14 constitutional violation, as you know, the Supreme
15 Court took care of that recently in the Indiana case
16 when it said there is no constitutional violation by a
17 photo ID law.

18 And I would mention that in the final
19 decision by the federal judge, not a preliminary
20 injunction, but the final decision, the Judge found
21 there was no violation of the Voting Rights Act, there
22 was no constitutional violation.

23 And on the issue of a poll tax, I would
24 be happy to read to you what the Court said about
25 that. He said -- because the plaintiffs were trying

1 to argue that because of incidental costs, like having
2 to travel to an office to get an ID or obtaining a
3 birth certificate, that that was a poll tax.

4 The federal courts dismissed the claim,
5 saying, "That argument represents a dramatic
6 overstatement of what fairly constitutes a poll tax;
7 thus, the imposition of tangential cost does not
8 transform a regulation into a poll tax. Moreover, the
9 cost of time and transportation cannot possibly
10 qualify as a prohibited poll tax because those same
11 costs also result from voter registration and
12 in-person voting requirements which one would not
13 reasonably construe as poll tax."

14 SEN. SHAPLEIGH: Let me ask you this:
15 Were you in Florida in 2000?

16 MR. von SPAKOVSKY: I went down briefly
17 as an observer, as did a lot of people, to watch the
18 counting of the vote.

19 SEN. SHAPLEIGH: This was before you got
20 into the Voting Rights Section of the Justice
21 Department?

22 MR. von SPAKOVSKY: I did lawyering in
23 Atlanta at the time when that occurred.

24 SEN. SHAPLEIGH: Now, let me continue
25 with this letter from your colleagues.

1 "Mr. von Spakovsky drafted legal briefs
2 in lawsuits between the Republican and Democratic
3 parties in three battleground states" -- this is
4 during the 2004 election cycle -- "Ohio, Michigan and
5 Florida, just before the election, all in favor of the
6 Republican party's position and included a position
7 that the Civil Rights Division had never taken
8 [before] with regards to the statutes it enforcers,
9 i.e. that there was no private right of action to
10 enforce HAVA. These briefs ran counter to the well-
11 established practice of the Civil Rights Division not
12 to inject itself into litigation or election
13 monitoring on the eve of an election where it could be
14 viewed as expressing a political preference or could
15 have an impact on a political dispute."

16 Did you participate in the drafting of
17 these briefs?

18 MR. von SPAKOVSKY: Well, I'm very glad
19 you brought that up, Senator. The briefs that were
20 filed in that case, the Justice Department made the
21 argument that there was no private right of action
22 under the Help America Vote Act, which was a federal
23 law passed in 2002.

24 It just so happens that a week before
25 this past November election, the Democratic Secretary

1 of State of the State of Ohio filed the exact same
2 type of lawsuit, also claiming that there was no
3 private right of action under the Help America Vote
4 Act, after she was sued by local party officials in
5 Ohio.

6 And the Supreme Court, in fact, issued a
7 decision saying, "There is no private right of action
8 under the Help America Vote Act. So, you see, if the
9 career lawyers whose letter you are discussing, at the
10 time they wrote their letter, they said it was their
11 legal opinion that that position was wrong. Well, it
12 turns out they were wrong. In fact, the Supreme Court
13 has said the position that the Justice Department took
14 in that brief, all three briefs, were the correct
15 position.

16 SEN. SHAPLEIGH: Was there any career
17 DOJ lawyer who signed your letter, your response to
18 Dianne Feinstein in connection with your nomination at
19 the FEC?

20 MR. von SPAKOVSKY: I had letters of
21 recommendation --

22 SEN. SHAPLEIGH: Did anyone --

23 MR. von SPAKOVSKY: -- from many
24 different officials, and I was the one that was asked
25 to respond to that letter.

1 SEN. SHAPLEIGH: Let me see if I can't
2 get you to answer the questions I'm asking. Did
3 anyone sign your letter in response to these six
4 career officials at DOJ to say what they're saying is
5 not true?

6 MR. von SPAKOVSKY: Senator, I sent a
7 letter to the committee.

8 SEN. SHAPLEIGH: So no one signed your
9 letter, just you?

10 MR. von SPAKOVSKY: I was the one asked
11 to respond to the committee, Senator.

12 SEN. SHAPLEIGH: Let me ask you about
13 your participation in the 2003 Texas case, the
14 redistricting case. There was a consensus of opinion
15 by the career DOJ officials in that case, was there
16 not?

17 What I am looking at here is DOJ career
18 lawyers submitting a unanimous recommendation to
19 object to an unprecedented mid-decade redistricting
20 plan that Texas submitted in 2003, submitted by the
21 career staff, a unanimous recommendation. That was
22 rejected by political appointees, including yourself.
23 Is that true or not true?

24 MR. von SPAKOVSKY: Senator, I was not a
25 political appointee at the department. I have said

1 that several times. And if you want to talk about the
2 Texas redistricting case, I would point out --

3 SEN. SHAPLEIGH: I just need to
4 understand this --

5 MR. von SPAKOVSKY: No. I --

6 SEN. SHAPLEIGH: -- was there a
7 unanimous recommendation --

8 MR. von SPAKOVSKY: That unanimous --

9 SEN. SHAPLEIGH: -- by --

10 MR. von SPAKOVSKY: That recommendation
11 was incorrect, Senator.

12 SEN. DUNCAN: Hang on a minute. We're
13 talking over each other. One at a time.

14 Senator, you've got a question on the
15 floor.

16 MR. von SPAKOVSKY: May I answer?

17 SEN. DUNCAN: The witness can answer.

18 SEN. SHAPLEIGH: Let me ask, if I may,
19 Mr. Chairman.

20 SEN. DUNCAN: All right.

21 SEN. SHAPLEIGH: This letter from six
22 DOJ career lawyers says that a unanimous
23 recommendation to object to the mid-decade
24 re-redistricting plan in Texas was submitted and later
25 rejected by political appointees. True or not true?

1 MR. von SPAKOVSKY: Mr. Chairman, I
2 can't answer that question "Yes" or "No." The only
3 way to answer it properly and to get all the facts out
4 is to give a detailed explanation of the legal review
5 and the court case decisions in the Texas
6 congressional redistricting plan. I would be happy to
7 do that if you would like me to do so.

8 SEN. SHAPLEIGH: Well, let me just get
9 one question answered. Did the career team -- not the
10 political appointees -- have a unanimous position that
11 the re-redistricting plan of 2003 did not comply with
12 the Voting Rights Act and unanimously said, "We ought
13 to reject it," and take that position? "Yes" or "No"?

14 MR. von SPAKOVSKY: Senator, the
15 recommendation that they made was that there were 11
16 majority/minority districts in Texas that needed to be
17 protected under Section 5 of the Voting Rights Act.
18 As you probably well know, a federal court in 2001
19 found that there were not 11 districts that needed to
20 be protected in this state. A three-judge panel said
21 there were eight districts in this state that needed
22 to be protected.

23 And when the Supreme Court issued its
24 final decision in the LULAC v. Perry case, the Supreme
25 Court said, "No, there are only eight protected

1 districts." So if you want to be able to show that
2 the legal opinions of those career lawyers were not
3 only wrong but, in fact, you know, the Supreme Court
4 and other judges have said that they were legally
5 incorrect, I would be happy to agree with you.

6 SEN. SHAPLEIGH: When you were nominated
7 to the FEC, a United States senator from Illinois
8 submitted a letter to the committee, and I would like
9 to read from that.

10 "Mr. von Spakovsky's role in supporting
11 the Department of Justice's quixotic efforts to attack
12 voter fraud raises significant questions about his
13 ability to interpret and apply the law in a fair
14 manner, as does his decision to ignore the
15 recommendations of long-serving career attorneys on
16 several occasions. Moreover, his role in the creation
17 of the Georgia voter ID law should have led to his
18 recusal from the Department of Justice's evaluation of
19 the law. His failure to recuse himself from that case
20 further demonstrates a lack of judgment that is not
21 befitting an FEC Commissioner."

22 Do you recall getting this letter?

23 MR. von SPAKOVSKY: I don't recall the
24 letter. But I would say, Senator, that the claim that
25 I was involved in creating the Georgia voter ID law is

1 factually completely incorrect. At the time the
2 Georgia voter ID law was being pushed through the
3 Legislature in 2005 in Georgia, I had been in
4 Washington working for the Department of Justice since
5 2001. So the letter is based, frankly, on a
6 complete -- frankly, a lie, saying that I had any
7 involvement, and that is completely untrue.

8 SEN. DUNCAN: Senator, before you -- and
9 you can keep going. But I just wanted to give you a
10 little bit of a notice, at 6:45 I think it will be two
11 hours since we've had a break for the court reporter.
12 So I just wanted to give you, if you wanted to -- you
13 can resume or whatever, but I wanted to give you a
14 little bit of notice of that.

15 SEN. SHAPLEIGH: I think I'm done. If I
16 could mark these as the next exhibit -- I think it's
17 Exhibit 15 -- the letters to the committee with
18 respect to the nomination at the federal level.

19 SEN. WEST: Mr. President --
20 Mr. Chairman, would the Senator yield?

21 SEN. SHAPLEIGH: Yes.

22 SEN. WEST: Who was the senator who
23 authored that letter?

24 SEN. SHAPLEIGH: The senator was Barack
25 Obama.

1 SEN. WEST: Oh, okay. Thank you.

2 So he was a liar. Okay.

3 SEN. DUNCAN: Being as we're not subject
4 to the hearsay rule, I'll go ahead and admit this
5 evidence.

6 Are you bringing them down?

7 (Exhibits handed to Secretary Spaw)

8 SEN. DUNCAN: Senator, I have here
9 Exhibit 15, which is a letter dated June 11, 2007, to
10 Diane (sic) Feinstein. And then there is another
11 letter in there.

12 SEN. WILLIAMS: Mr. Chairman?

13 SEN. DUNCAN: We'll have Exhibit 15A, B
14 and C. Exhibit A is the June 11, 2007 letter.
15 Exhibit B is the -- is this a blog or -- this is
16 signed by him? Okay. Or it's an e-mail from --
17 okay -- from Barack Obama, June 12, 2007, and then
18 also a letter from Public Citizen dated October 3,
19 2007, which will be Exhibit 15C.

20 (Exhibits Nos. 15A, 15B and 15C marked
21 and admitted)

22 SEN. DUNCAN: Members, we've been going
23 for about two hours. It's my plan to try to give the
24 court reporter a break every hour and 45 minutes to
25 two hours, as necessary. It will be a 10-minute

1 break --

2 SEN. WENTWORTH: Mr. President, could I
3 ask one before we break?

4 SEN. DUNCAN: Sen. Wentworth.

5 SEN. WENTWORTH: I don't believe our
6 witness came prepared to defend himself from attacks
7 like this, and I would like to give him the
8 opportunity to file, as part of the record, his
9 response to the letters that have just been filed as
10 exhibits.

11 SEN. WEST: Mr. President?

12 SEN. DUNCAN: Is there any objection?

13 SEN. WEST: There is objection.

14 SEN. DUNCAN: Why is there objection?

15 SEN. WEST: Well, first of all, the
16 characterization that he has been attacked, I object
17 to that.

18 SEN. DUNCAN: Well, we'll --

19 SEN. WEST: Like any other witness, we
20 should be able to cross-examine him like we cross-
21 examined other witnesses. I resent the
22 characterization of him being attacked.

23 SEN. WENTWORTH: Well, you can resent it
24 all you want.

25 SEN. WEST: Well, you can say it all you

1 want to also. He wasn't attacked, fellow.

2 SEN. DUNCAN: Let's take one thing at a
3 time. Is there any objection to the witness being
4 able to submit testimony to the committee --

5 SEN. WEST: There is objection.

6 SEN. DUNCAN: -- to be received in the
7 record post- --

8 SEN. WEST: There is objection, yes.

9 SEN. WENTWORTH: Mr. Chairman, I move
10 that the witness be permitted to respond in writing to
11 the letters that have been obviously not to his
12 advantage.

13 SEN. WEST: This man has characterized
14 the President of the United States as a liar.

15 SEN. DUNCAN: All right. We're going to
16 take a break and we will be back in session at
17 seven -- rather, 6:50 -- 6:55. I'm sorry.

18 (Recess: 6:46 p.m. to 7:06 p.m.)

19 SEN. DUNCAN: The Senate Committee of
20 the Whole will come to order. If we could get our
21 witness back up here. I think Sen. Shapleigh rested.
22 And we will call Sen. Williams.

23 SEN. WILLIAMS: Thank you, Mr. Chairman.
24 When the witness returns, I have some questions for
25 him.

1 (Brief pause)

2 SEN. DUNCAN: The witness is present.

3 You can ask your questions.

4 SEN. WILLIAMS: Thank you, Mr. Chairman.

5 Mr. Spakovsky, I don't want to butcher
6 your name. Would you pronounce it for me once. I
7 know I'm doing --

8 MR. von SPAKOVSKY: You did a great job.
9 "Spa-kos-ski."

10 SEN. WILLIAMS: Say it again.

11 MR. von SPAKOVSKY: "Spa-kos-ski."

12 SEN. WILLIAMS: "Spa-kos-ski." Okay.
13 von "Spa-kos-ski." Okay.

14 I had some questions for you about a
15 report that I think you referred to earlier in your
16 testimony. Are you familiar with the report by
17 Jeffrey Milyo of the effects -- it's titled "The
18 Effects of Photographic Identification on Voter
19 Turnout in Indiana: A County-Level Analysis." Are
20 you familiar with that report?

21 MR. von SPAKOVSKY: Yes, Senator. In
22 fact, that's the report I was referring to that took a
23 look at what happened in Missouri in I believe 2006
24 when the photo ID law went into effect for the first
25 time.

1 SEN. WILLIAMS: Now, just for the
2 record -- and I'm going to submit this report into the
3 record in a moment. And I think there are plenty of
4 copies floating around here. I think everybody has
5 got one.

6 Mr. Milyo is a professor in the Truman
7 School of Public Affairs and the Department of
8 Economics at the University of Missouri. And he's a
9 Hanna Family Scholar in the Center for Applied
10 Economics at the University of Kansas School of
11 Business. And he's a Senior Fellow at the Cato
12 Institute in Washington, D.C.

13 Would it be your opinion that Mr. Milyo
14 has written an academic study, that this would qualify
15 as what one might commonly refer to as an academic
16 study of the effects of photo ID in Indiana?

17 MR. von SPAKOVSKY: Yes, sir, he is a
18 very good researcher.

19 SEN. WILLIAMS: Okay. Now, before we
20 get into the report, in one of the press releases that
21 I've seen about this report, he asserts that,
22 "Previous studies have examined the effects of voter
23 ID laws more generally but none of these separately
24 analyzes the effects of so-called 'mandatory photo ID'
25 on turnout in Indiana."

1 He goes on to say that, "I examine a
2 variety of models of voter turnout," and after
3 controlling for several factors that influence
4 countywide turnout, there is no consistent or
5 statistically significant evidence that photo ID law
6 depressed turnout in counties with greater percentages
7 of minority, poor or elderly voters. Contrary to
8 conventional wisdom, turnout in Democratic-leaning
9 counties actually increased in the wake of the new
10 photo ID requirements, all else constant.

11 Now, what's interesting about this
12 report to me as I reviewed it is, there's been a lot
13 that's been said on this floor about the effect of
14 President Obama's election on the turnout,
15 particularly in Georgia, because there is a large
16 African-American population there. And, of course,
17 people turned out in record numbers. But this report
18 is actually -- the time period, as I understand it,
19 includes two election cycles. In neither one of
20 those, Mr. Obama wasn't running for president during
21 either one of those election cycles, so this report
22 wouldn't be influenced by that. Would that be your
23 understanding?

24 MR. von SPAKOVSKY: That is my
25 understanding, Senator.

1 SEN. WILLIAMS: Okay. And in the
2 report -- and I just want to get this into the record
3 here, and I would like for you to comment on this if
4 you would, please. "In order to measure" -- he says
5 in his report, "In order to measure the overall effect
6 of photo ID on voter turnout across the 92 Indiana
7 counties, I estimate an ordinary least squares
8 regression controlling for county-fixed effects and
9 year effects. The county-fixed effects account for
10 factors such as demographic differences across
11 counties, while the year effects account for the
12 different composition of state races in each election
13 year. However, there has only been one general
14 election in Indiana post-photo ID, so it is not
15 possible to separately identify the overall effects of
16 photo ID on voter turnout absent additional
17 assumptions. For this reason, the present analysis
18 focuses on the effects of photo ID on different groups
19 of eligible voters.

20 "I evaluate claims about the relative
21 effects of voter ID on racial and ethnic minorities,
22 the poor, the elderly, persons without a high school
23 diploma and Democrats by estimating the effects of
24 photo ID on turnout in counties with greater
25 percentages of those groups as a percent of county

1 population. However, these demographic variables do
2 not vary over time, since they are taken from the 2000
3 U.S. Census. This means that it is not possible to
4 control for county-fixed effects when estimating the
5 effects of photo ID on these particular demographic
6 groups. For this reason, I account for differences in
7 the demographic composition of counties by including
8 control variables for per capita income and the
9 percent of county population by several categories,
10 including: Age, education, ethnicity, female labor
11 force participation, military status, non-citizens,
12 party, poverty, race, and rural status."

13 All of that is included in the appendix
14 to this report.. And he also goes on to say, "I also
15 check the sensitivity of results when this list of
16 control variables is pared down to just age,
17 education, ethnicity, income, and race."

18 I don't know if you have a copy, but I
19 believe that's on Page 4 and 5 of the report. Do you
20 have a copy of it up there?

21 MR. von SPAKOVSKY: I don't have a copy
22 of the report.

23 SEN. WILLIAMS: Would you like it?

24 MR. von SPAKOVSKY: But I've read it.

25 SEN. WILLIAMS: Okay. Now, what I would

1 like for you to comment on -- and that's a mouthful
2 that I just read -- but what I would like for you to
3 comment on is, how does the statistical analysis that
4 this academic has performed, would this be something
5 that would be comparable to the regression analysis
6 that we've heard talked about? Are we looking at the
7 same kinds of things here, how this would influence
8 minority turnout? Can you comment on that for me?

9 MR. von SPAKOVSKY: Well, I'm not an
10 expert on statistical analysis. But my understanding,
11 from reading that and many other reports is that, yes,
12 that's the kind of analysis he was doing to try to see
13 if the photo ID law of Indiana would have any effect,
14 particularly on different groups, because he was
15 looking, as you read it, different groups: The poor,
16 elderly, different minority groups. And he found that
17 it did not have any effect on depressing their
18 turnout.

19 SEN. WILLIAMS: So it would be a
20 reasonable conclusion for somebody to draw, after
21 reading this report, that the effect of the Indiana
22 voter ID law, it had really no effect on the turnout
23 among any of the groups that the DOJ Civil Rights
24 Department would be concerned about when they're doing
25 an analysis?

1 MR. von SPAKOVSKY: Under Section 5,
2 that's correct.

3 SEN. WILLIAMS: Under Section 5. That
4 would be your conclusion?

5 MR. von SPAKOVSKY: That is correct.

6 SEN. WILLIAMS: Okay. And so he goes
7 on -- if I would -- if you could just bear with me a
8 few minutes. There's a couple of other points that I
9 want to make sure that you have an opportunity to
10 comment on. He says in his conclusion, the
11 discussion, that "Given the context of the existing
12 research on voter turnout, my findings for Indiana are
13 completely unsurprising. Despite the attention-
14 grabbing and often strident claims that voter
15 identification is the modern version of the poll tax
16 and the like, nothing could be further from the truth.
17 Existing theory and evidence from decades of social
18 science research do not support the contention that
19 photo ID requirements are likely to have a large and
20 detrimental impact on turnout; nor does the previous
21 empirical evidence find any significant impact of
22 photo identification on racial or ethnic minorities.
23 Further, the best previous evidence to date also finds
24 no significant impact of photo ID on the poor or the
25 elderly."

1 He goes on to say that the findings that
2 emerge are, I believe, four-fold: One, that an
3 overall county-level turnout -- he did a county-level
4 analysis. Now, I think that's important when he's
5 looking at it for all 92 counties. Do you know if
6 that would be more or less detailed than they would do
7 at the Department of Justice? Would they do a
8 statewide analysis or would they do it on a county-by-
9 county analysis? Do you know?

10 MR. von SPAKOVSKY: I guess it would
11 just depend on the particular case.

12 SEN. WILLIAMS: Okay. And then an
13 insignificant increase in the relative turnout for
14 counties with a greater percentage of minority and
15 poor populations; three, no consistent or significant
16 impact on the relative turnout in counties with a
17 greater percentage of less educated and elderly
18 voters; and finally, No. 4, no significant -- excuse
19 me -- a significant relative increase in turnout for
20 counties with a higher percentage of Democratic
21 voters. His final conclusion is that you actually had
22 more turnout in Democratic precincts on a county level
23 after this law was enacted than you did before. Does
24 that surprise you?

25 MR. von SPAKOVSKY: It does not surprise

1 me, because my experience in the election area,
2 frankly, is that when people have confidence that
3 their vote is going to count, they go to the polls.

4 SEN. WILLIAMS: Thank you very much.

5 Mr. Chairman, I would like to submit
6 this report with whatever our next exhibit number is.

7 SEN. DUNCAN: Senator, that would be 16.
8 And will you state the title of the report and the
9 date.

10 SEN. WILLIAMS: The report is "The
11 Effects of Photographic Identification on Voter
12 Turnout in Indiana: A county-level Analysis," by
13 Jeffrey Milyo.

14 SEN. DUNCAN: Okay. What's the date of
15 the article?

16 SEN. WILLIAMS: The report is dated --
17 it was revised December of 2007.

18 SEN. DUNCAN: Okay. It will be received
19 into the record.

20 (Exhibit No. 16 marked and admitted)

21 SEN. DUNCAN: Are you completed with
22 your -- Senator Watson.

23 SEN. WATSON: Thank you, Mr. Chairman.

24 I just have a couple of questions.

25 First of all, who funded the Milyo study that we just

1 talked about? Do you know?

2 MR. von SPAKOVSKY: I don't know.

3 SEN. WATSON: Do you know whether it was
4 ever peer-reviewed?

5 MR. von SPAKOVSKY: I don't know the
6 answer to that.

7 SEN. WATSON: Okay. Just so that I'm
8 clear on why you're here today, first of all, you've
9 not done any sort of statistical analysis of the
10 effect that the new requirements of proposed Senate
11 Bill 362 would have on African-Americans in Texas?

12 MR. von SPAKOVSKY: I have not done a
13 study.

14 SEN. WATSON: And you haven't done that
15 with regard to Hispanics?

16 MR. von SPAKOVSKY: No.

17 SEN. WATSON: Or people making less than
18 \$35,000 in the State of Texas?

19 MR. von SPAKOVSKY: No.

20 SEN. WATSON: You've not done any
21 statistical analysis, nor been asked to, about the
22 effect of the new requirements of the proposed Senate
23 Bill 362 on people who speak only Spanish or
24 Vietnamese in the State of Texas?

25 MR. von SPAKOVSKY: I have not.

1 SEN. WATSON: Have you done any sort of
2 statistical analysis with regard to the potential
3 impact of the new requirements of proposed Senate Bill
4 362 on seniors or students or people with disabilities
5 in the State of Texas?

6 MR. von SPAKOVSKY: I have not, Senator.

7 SEN. WATSON: Do you have any knowledge
8 that you can share with us regarding the impact that
9 this proposed legislation would have on people who
10 live along the border of Texas?

11 MR. von SPAKOVSKY: Is that somehow
12 different than --

13 SEN. WATSON: Well, you may have just
14 answered my question.

15 MR. von SPAKOVSKY: Well, you know, I
16 have not done a study of Texas.

17 SEN. WATSON: Okay.

18 MR. von SPAKOVSKY: But there have been
19 plenty of other studies done, all of which have been
20 mentioned, that have looked at these issues.

21 SEN. WATSON: Fair enough. And that's
22 part of what I want to make sure is that we're clear,
23 because since we are in Texas and we're talking about
24 the impact on Texans -- for example, do you have any
25 data with you today on whether or not African-

1 Americans of Texas are more or less likely to have
2 driver's licenses than whites?

3 MR. von SPAKOVSKY: I haven't seen that
4 data. I did take a look, Senator, before I came down,
5 at some data that is available from the United States
6 Government. And the U.S. Department of
7 Transportation, the Federal Highway Administration
8 highway statistics for 2006 showed that the total
9 number of licensed drivers in Texas, age 18 and over,
10 is 14.6 million.

11 The Census Bureau, current population
12 survey, also for 2006, shows that the number of
13 citizen voting age population is 14 million four. So
14 there are actually more driver's licenses issued in
15 the State of Texas than there are individuals eligible
16 to vote in the State of Texas.

17 SEN. WATSON: And, of course, 16-year-
18 olds are available to get licenses in Texas, even
19 though they're not eligible to vote. How many --

20 MR. von SPAKOVSKY: The numbers --

21 SEN. WATSON: -- licenses were lost in
22 the State of Texas last year?

23 MR. von SPAKOVSKY: I don't know,
24 Senator, but the numbers I gave for the total licensed
25 drivers were licensed drivers age 18 and up.

1 SEN. WATSON: All right.

2 MR. von SPAKOVSKY: I took out the
3 numbers for individuals who were below the age of 18.

4 SEN. WATSON: How many of those licenses
5 were lost last year?

6 MR. von SPAKOVSKY: I have no idea.

7 SEN. WATSON: How many of them were
8 duplicate licenses?

9 MR. von SPAKOVSKY: I don't know.

10 SEN. WATSON: Thank you, Mr. Chairman.

11 SEN. DUNCAN: Senator Ellis.

12 SEN. ELLIS: Thank you, Mr. President.

13 Mr. von "Kosky" -- did I get that right?

14 MR. von SPAKOVSKY: "Spa-kos-ski."

15 SEN. ELLIS: "Spa-kos-ski." I'm sorry.

16 Is this your first time in Texas?

17 MR. von SPAKOVSKY: No, sir.

18 SEN. ELLIS: Have you been a frequent
19 visitor to the Lone Star state?

20 MR. von SPAKOVSKY: I've been down here
21 before on business.

22 SEN. ELLIS: Well, welcome back. I know
23 you are familiar with the Carter-Baker Commission
24 Report. And I'm wondering, of the 87 recommendations
25 in that report, other than the one relating to voter

1 identification, are you in favor of the other 86 in
2 that report?

3 MR. von SPAKOVSKY: Well, Senator, if
4 you want to ask me about each one, one at a time --

5 SEN. ELLIS: Okay.

6 MR. von SPAKOVSKY: -- I would be happy
7 to tell you, but I --

8 SEN. ELLIS: Any there any of them that
9 you are against?

10 MR. von SPAKOVSKY: Senator, I read the
11 report quite some time ago. In fact, if you look at
12 the end of the report, you'll see me listed as one of
13 the advisers to the Commission. I think there were
14 lots of reports -- lots of recommendations in there I
15 agreed with. I don't recall what all the different
16 recommendations were. I think in many ways, you know,
17 it was a pretty good report.

18 SEN. ELLIS: I assume you've gone around
19 the country testifying on this subject --

20 MR. von SPAKOVSKY: I --

21 SEN. ELLIS: -- not the first time at
22 this rodeo?

23 MR. von SPAKOVSKY: This is the first
24 time I've really testified in a State Legislature
25 about this issue.

1 SEN. ELLIS: You heard some of the
2 discussion earlier where we were reading excerpts from
3 editorials by President Carter and Secretary Baker.
4 Is it a fair characterization that they were
5 recommending voter ID as part of a package, and part
6 of the package would be for states to comply with the
7 REAL ID Act? Is that a fair is assessment?

8 MR. von SPAKOVSKY: I believe there
9 was -- if I recall, I think there was a recommendation
10 in there about that REAL ID Act. I don't remember the
11 detail.

12 SEN. ELLIS: I know. But I'm saying, do
13 you think it is a fair representation of the position
14 of the two principals from the Carter-Baker
15 Commission, that they were saying voter ID was part of
16 a package and that states should adopt the REAL ID
17 provisions, not have these different standards all
18 around the country? Their purpose was so that more
19 people would be able to vote, or a concentrated effort
20 to make sure that people were aware of the new
21 requirements. Is that a fair assessment or not?

22 MR. von SPAKOVSKY: Senator, as I told
23 you, it's been a while since I read the report. I,
24 frankly, don't remember. You know, there is another
25 witness here who I think is going to testify about it

1 that could probably answer that question.

2 SEN. ELLIS: But you are for the voter
3 ID part, you read that part basically. You know
4 you're for that part, though. Right?

5 MR. von SPAKOVSKY: I recall that part,
6 because I was asked about it.

7 SEN. ELLIS: Okay. I have read that you
8 were involved in an effort or have done some writing
9 for the Georgia Public Policy Foundation to encourage
10 an aggressive campaign to purge the election rolls of
11 felons. Is that correct?

12 MR. von SPAKOVSKY: I wrote a paper
13 about 12 years ago, Senator. And one of the
14 recommendations I made in the paper was that the
15 state's voter registration list should be compared on
16 a regular basis with the computer records of the
17 Department of Corrections so that any individuals who
18 had become felons and were, therefore, not entitled to
19 vote under Georgia law, that that kind of data
20 matching should be done. You may know that's a
21 recommendation that Congress implemented into federal
22 law in 2002 in the Help America Vote Act.

23 SEN. ELLIS: Are you aware that as a
24 result of your article, you were given credit for a
25 very aggressive effort to remove felons off the roll

1 in Florida, and it also led to a major voter
2 disenfranchisement where they made mistakes and they
3 took Ron Ellis off the rolls, even if that was not the
4 person that committed a felony? And there were a
5 number of people who were denied the right to vote in
6 the 2000 election. Are you aware of that?

7 MR. von SPAKOVSKY: Senator, there was a
8 newspaper article written some time ago claiming that
9 I was somehow involved with that effort in Florida.
10 That is completely untrue. I was not an election
11 official in Florida. I had no involvement with that.
12 I simply wrote a paper in Georgia recommending that
13 the Georgia Legislature and Secretary of State
14 consider running monthly computer comparisons between
15 the state voter registration list and state
16 corrections records which now, you know, all states
17 are supposed to be doing that by federal law.

18 SEN. ELLIS: Maybe your reputation as a
19 guru on these subjects -- this subject -- has preceded
20 you around the country. You made a reference to the
21 Lawyers' Committee on Civil Rights earlier at the
22 beginning of your testimony. Do you remember that
23 characterization?

24 MR. von SPAKOVSKY: I do.

25 SEN. ELLIS: What was that, if you would

1 just repeat that for my colleagues again.

2 MR. von SPAKOVSKY: It's an advocacy
3 group based in Washington.

4 SEN. ELLIS: I think you described that
5 as a liberal advocacy organization.

6 MR. von SPAKOVSKY: Well, I would tend
7 to think they probably are liberal.

8 SEN. ELLIS: All right. How would you
9 describe the advocacy organization that you work for?

10 MR. von SPAKOVSKY: It's a conservative
11 foundation. It's the largest -- has the largest
12 support of any foundation in the country. It has
13 400,000 contributors, two-thirds of whom are
14 individuals.

15 SEN. ELLIS: Okay. So the lawyers you
16 meet on civil rights you characterize as a liberal
17 advocacy organization and the Heritage Foundation you
18 would describe as the best funded and extremely
19 conservative public policy out there?

20 MR. von SPAKOVSKY: I did not say
21 extremely conservative. I think they're a --

22 SEN. ELLIS: But conservative?

23 MR. von SPAKOVSKY: I think they're a
24 rule of law organization who believes in the
25 constitution and the principles this country was

1 founded on.

2 SEN. ELLIS: Are you familiar with the
3 history of the Lawyers' Committee on Civil Rights?

4 MR. von SPAKOVSKY: I know some of it,
5 yes.

6 SEN. ELLIS: But what do you know about
7 their history?

8 MR. von SPAKOVSKY: It's an organization
9 born, I think, during the civil rights movement to
10 help individuals who were having their voting rights
11 denied.

12 SEN. ELLIS: Yes. Just for your
13 edification and the members of this body, it was
14 founded in 1963 as a result of a meeting that
15 President Kennedy and Attorney General Kennedy and
16 Vice President Lyndon Johnson, had at the White House,
17 in which they summoned all of the major law firms in
18 America to get involved and use their legal skills as
19 a way of ending some of the demonstrations on the
20 streets, to remove people who were pushing
21 discriminatory practices all around the country, in
22 Alabama in particular.

23 And only because you described them as a
24 liberal organization, as though for some reason they
25 ought to be dismissed, I just wanted to point out that

1 the who-is-who silk stocking law firms in America were
2 in that room. Most of the bar associations around the
3 country were involved, the ABA, and it is quite a
4 distinguished history. And I just wanted to make sure
5 that I added that to the record. Maybe you should do
6 a little research on the --

7 MR. von SPAKOVSKY: Senator, I certainly
8 don't disagree with you. But if you're recall, what I
9 said about the Lawyers' Committee For Civil Rights was
10 in the context of explaining that two of the lawyers
11 who had complained about me, in fact, worked for the
12 Lawyers' Committee For Civil Rights and, in fact, were
13 lawyers who were the litigators in the federal lawsuit
14 in Georgia against the Georgia voter ID law. And, in
15 fact, they lost that suit. And, in fact, the legal
16 claims that they made were dismissed by the judge
17 there.

18 SEN. ELLIS: Are you familiar with The
19 Federalist Society?

20 MR. von SPAKOVSKY: I am a member of The
21 Federalist Society.

22 SEN. ELLIS: And how would you
23 characterize that organization?

24 MR. von SPAKOVSKY: It's a group of
25 lawyers who get together and discuss many different

1 issues. And one of the good things about the
2 Federalist Society, if you ever come to one of its
3 panel discussions is, and like a lot of organizations,
4 The Federalist Society tries to get people on both
5 sides of an issue so that you can have a good
6 discussion and get different points of view.

7 SEN. ELLIS: Thank you.

8 SEN. DUNCAN: Members, there's no other
9 persons registered, so the witness will be excused.

10 MR. von SPAKOVSKY: Thank you,
11 Mr. Chairman.

12 SEN. DUNCAN: Thank you, sir.

13 The Chair calls Tova Andrea Wang.
14 Ms. Wang, you have 10 minutes. And you can begin.
15 And state your name and who you represent.

16 **TESTIMONY BY TOVA ANDREA WANG**

17 MS. WANG: Sure. Thank you. My name is
18 Tova Andrea Wang. Thanks very much for allowing me to
19 come testify today. I'm Vice President for Research
20 at Common Cause, a non-partisan national organization
21 with 36 state chapters, including one right here in
22 Texas. And I have spent the last several years doing
23 research and writing and speaking on elections issues
24 and voting rights issues.

25 I want to start out talking about the

1 disenfranchising impacts of voter ID such as this. I
2 know that for probably all of you in the room -- and I
3 would include myself -- it seems so easy. You have an
4 ID in your pocket right now, probably several. But I
5 have to really emphasize to you all that it's not the
6 case for everybody. For some people they don't have
7 their ID, and it would be a real hardship for them to
8 get that ID, and we need to understand this group in
9 our society. In fact, about 10 percent of the
10 American people don't have government-issued photo ID.
11 And as has been pointed out repeatedly today, this is
12 disproportionally the case with African- Americans,
13 immigrants, the poor, people with disabilities, senior
14 citizens and students.

15 There have been numerous studies to this
16 effect. I want to point out one in particular,
17 Brennan Center survey talking just about income.
18 People with incomes lower than \$35,000 a year are
19 twice as likely not to have the kind of ID we're
20 talking about. 38 percent of Texans have incomes that
21 are less than \$35,000 a year. African-Americans are
22 three times less likely to have ID than whites. And,
23 in fact, one-fourth of African-Americans don't have
24 government-issued photo ID.

25 So this is what I'm talking about when

1 I'm talking about thinking about a group in our
2 society that maybe some of us don't have every day
3 interaction with. People always talk about how
4 everyone has ID, you need it to fly and rent a DVD and
5 all of these kinds of things.

6 Now, I know Hurricane Katrina is
7 starting to seem like a long time ago now, but I want
8 us to think back for a second about all those people
9 in the Astrodome. They were there because they
10 couldn't get out, because they don't have driver's
11 licenses, they don't have cars, they're not going out
12 and renting DVDs on the weekends and flying on
13 vacations. So this whole notion that everyone has ID
14 is just untrue. Many poor people don't.

15 We talked a lot about fraud today, too.
16 There is also a lot of mythology around that. I want
17 to point out to you that the U.S. Department of
18 Justice has never brought a case in the last several
19 years of the type that would be addressed by a voter
20 ID law such as this.

21 Now, we know this was in an environment
22 in the last several years in which U.S. attorneys were
23 under tremendous pressure to bring cases of voter
24 fraud against people, and people were -- allegedly at
25 least -- fired for not doing so; and, yet, not one

1 case.

2 It is also especially telling that in
3 all of the litigation, federal litigation over voter
4 ID that's taken place, not one of the states defending
5 these laws has come up with a single case of fraud
6 that would have been addressed by a voter ID law. In
7 fact, in Crawford versus Marion County, the Indiana
8 case that we've heard a lot about today, Justice
9 Stevens himself, in writing the opinion essentially
10 admitted this, because the only incident of fraud that
11 he really -- were impacted that I noticed -- we've
12 reached back into the past for examples a lot today --
13 was Boss Tweed in the 19th Century and one possible
14 case that has gone unproven in Washington State in
15 2004.

16 There is another thing I want to
17 underscore about the fraud thing. Problems with -- or
18 even fraud in the voter registration process is a
19 fully unrelated, although very worrisome problem in
20 itself. There is no available evidence that faulty or
21 even false registration forms lead to fraudulent
22 voting.

23 Even advocates from across the spectrum,
24 academics and, more importantly, elections officials
25 and registrars, as I have done in the course of my

1 work, and they will tell you that they have not seen a
2 case of voter registration fraud that led to a false
3 vote.

4 I just want to talk to you even about --
5 the most extreme discussion about voter registration
6 just this last year around the organization ACORN;
7 and, yet, I have not heard of one case of someone who
8 was accused of having registered falsely through
9 ACORN, actually showing up at the polls to vote.

10 Now, voter registration fraud is a
11 problem. It should be taken seriously and it should
12 be prosecuted, but voter identification will do
13 nothing about voter registration fraud.

14 Now, it seems to me that because
15 proponents of ID have not been able to demonstrate
16 that fraud is actually a problem, they're claiming
17 that we need to have voter ID laws because the
18 American people believe it's a problem. And if they
19 believe it's a problem, they won't have confidence in
20 the system and they won't turn out to vote.

21 Well, we now have actual studies done
22 that show that belief in the existence of fraud has
23 zero impact on voting behavior. And, in fact,
24 professors at MIT and Columbia conducted a survey
25 published recently in the Harvard Law Review that

1 found that perceptions of fraud have no relationship
2 at all to someone's likelihood of voting.

3 And it's very convenient that the people
4 that are making this perception that all about -- this
5 is all about instilling confidence -- are the people
6 who made people believe in the first place falsely
7 that there was this fraud problem. So it's
8 questionable what this is all really about.

9 I also want to point out to you that
10 many states do not have a photo identification
11 requirement and so -- in fact, most states don't have
12 a photo identification requirement, and they don't
13 have any problem with polling place fraud, as Texas
14 does not have such a problem. And they are a diverse
15 set of states, many with immigrant populations and
16 they have no great problem with voter fraud.

17 And I believe that those states care
18 just as much as the State of Texas about the integrity
19 of their elections, and they don't feel that a voter
20 ID requirement such as this is necessary, and they're
21 right. And even in those states that do require a
22 photo ID, they still allow someone to fill out an
23 affidavit if they don't have the ID. And they are
24 allowed to cast a regular -- not a provisional -- but
25 a regular ballot.

1 I also want to talk about this idea,
2 giving people free IDs is somehow the solution. The
3 truth is, ID is never free. It's not free for the
4 voter and it's not free for the state either. I'm
5 going to use Indiana as an example, to show why voter
6 ID is never really free for the voter, as Texas is
7 likely to have a similar program.

8 In order to get the so-called free ID,
9 you have to do to DMV during working hours and present
10 the primary document, a secondary document and a proof
11 of residency or two primary documents and one proof of
12 residency document. The only documents basically that
13 count are passports and birth certificates.

14 Most people -- and I include myself in
15 this -- don't have their birth certificate handy at
16 home, so they have to go out and buy it. Well, in
17 Texas it costs \$22 to get a birth certificate, and in
18 many places it's much more than that and also can be
19 very time-consuming, so that someone who needs to
20 register and vote is going to have to do this well in
21 advance.

22 And there are additional difficulties if
23 your name has changed at all since you got your birth
24 certificate, which means that particularly women who
25 have married and have changed their name will

1 encounter further difficulties.

2 I also heard you talking earlier today
3 about the cost. For constitutional reasons, as was
4 demonstrated by the Georgia litigation over this
5 issue, you will need to ensure that every eligible
6 voter in Texas can easily obtain a free photo
7 identification card and to do that right and to do it
8 within the mandates of the Voting Rights Act against
9 poll taxes is going to require enormous resources.

10 In 2005, Georgia found this out the hard
11 way. And I would refer you to my written testimony.
12 I have in there in the end notes all the various steps
13 that Georgia had to take in order to comply with the
14 constitution, to educate people on it. It goes far
15 beyond anything I think you discussed today does.

16 Now, we don't know exactly how much in
17 dollars this is going to cost you. As we've talked
18 about today, there has not been a financial impact
19 analysis. But I will say that this is a recurring
20 cost; this isn't going to be \$600,000 or whatever was
21 discussed just this year. It's going to be \$600,000
22 this year or a million dollars this year and a million
23 dollars next year.

24 So there's going to have to be this
25 ongoing campaign in order to comply with the

1 constitution. And so I think that this will end up
2 costing millions of dollars over the course of the
3 next few years. And I say this as an outsider and
4 perhaps, as such, it's not my place. But I do have to
5 wonder how Texans will feel about millions of dollars
6 being spent on a phantom problem when people are
7 losing their jobs. And as you probably know, Texas
8 actually is No. 1 in the number of people who don't
9 have health insurance.

10 I want to make one other point about
11 voter ID, that I don't think Texas might really want
12 to get involved with right now. Studies of real
13 elections show that whether it's purposeful or not --
14 and I know I'm going to go overtime, so tell me if --
15 I only have a little bit more.

16 Studies of elections show that whether
17 it's purposeful or not, poll workers demand photo
18 identification much more often from African-Americans
19 and Latinos than white voters. Now we're talking
20 about implementation on the ground at the polling
21 place.

22 In a study conducted by a Harvard
23 professor of tens of thousands of voters in the 2006
24 general election, 47 percent of whites were asked for
25 photo identification whether it was required or not,

1 compared to 54 percent of Hispanics and 55 percent of
2 African-Americans.

3 Harvard did a survey of thousands of
4 voters in the 2008 Super Tuesday primary -- and I am
5 wrapping up. 53 percent of whites were asked for
6 photo ID, compared with 58 percent of Hispanics and a
7 staggering 73 percent of African-Americans. And this
8 was true even after controlling for factors such as
9 income, education, age and region.

10 Again, another study in New Mexico in
11 2006 again found Latinos were disproportionately asked
12 for ID when they weren't supposed to be, and this is
13 true in the Super Tuesday and 2007 gubernatorial
14 elections as well.

15 Now, the point is that most states run
16 their elections without the kind of laws that you're
17 talking about here in Texas, and they do just fine.
18 They have very honest elections, and I believe Texas
19 can do just as well.

20 Texas has a very low turnout, voter
21 turnout rate; in fact, one of the lowest in the
22 country. Even in the historic election of 2008 when
23 voters came out in unprecedented numbers, less than
24 55 percent of Texans voted, earning it the dubious
25 distinction of ranking 48th in turnout nationally.

1 It's my opinion that if the Texas State
2 Legislature is concerned about the fairness of its
3 elections, it would be better off using all of its
4 energies and resources to do something about that
5 problem rather than a problem it does not have.

6 Thank you very much.

7 SEN. CARONA: Ms. Wang, we thank you for
8 your testimony.

9 The Chair at this time calls upon
10 Sen. Gallegos. Senator, for what purpose?

11 SEN. GALLEGOS: To ask the witness some
12 questions, Mr. Chairman.

13 SEN. CARONA: Please proceed.

14 SEN. GALLEGOS: Thank you.

15 **QUESTIONS FROM SENATE FLOOR**

16 SEN. GALLEGOS: Ms. Wang, thank you for
17 being here. I've got several questions that I would
18 like to ask you. The first one is, doesn't it solve
19 the problem for those lacking a photo ID, that under
20 this legislation as presented before us today, that
21 you can produce two other forms of ID?

22 MS. WANG: You know, certain groups
23 don't possess government-issued photo IDs. They're
24 also much less likely to have two forms of
25 identification that are on the list of other possible

1 ID forms. And basically what you're asking people to
2 do is, is sort of bring a file folder full of
3 identification documents and engage in a huge campaign
4 to make sure people know what they are.

5 And there is no affidavit option like
6 there is in other places, if you cast a provisional
7 ballot if you don't have ID. As I understand Texas
8 law, they automatically won't get counted. If you
9 cast a provisional ballot because you didn't have the
10 requisite ID, the ballot will not count.

11 Now, I can go through the list of the
12 various types of ID that a person can use if they have
13 two forms of it and talk about why each one of them
14 might be difficult. For example, one of them is, you
15 know, using a copy of a current utility bill or a bank
16 statement, et cetera. Well, not everyone has such
17 documents in their name. For example, married women
18 whose bills come in their husband's names or poor
19 people who quite often live in multi-family homes.

20 I can go through the list and talk about
21 why poor people or different groups of people won't
22 have any one given form. And to ask them for two plus
23 their voter registration certificate, as I understand
24 it, is really asking people to just sort of dump
25 everything they have in a folder -- and they may not

1 have them at all -- and hope that they get past the
2 poll worker with them.

3 And, as I say, there will be many groups
4 that don't have them. I've talked about the birth
5 certificate and the fact that you had to pay \$22 to
6 get it. A divorce decree and a marriage license, a
7 copy of a marriage license costs \$20 in Texas. A copy
8 of a divorce decree costs \$20 in Texas, as I
9 understand it at least. And so, you know, there are
10 difficulties in obtaining all of these types of IDs,
11 so it really doesn't solve the problem at all.

12 SEN. GALLEGOS: Thank you. Let me ask
13 you this: There has been a lot of debate today on
14 voter fraud -- and, you know, there is a lot of it; in
15 some cases, there is none of it. Let me ask you, is
16 there a great deal of voter fraud in the United States
17 that justifies a voter ID?

18 MS. WANG: I won't come out here and
19 tell you that there's not voter fraud. I will come
20 here and tell you that there is not the type of voter
21 fraud that a voter identification requirement such as
22 that proposed in this legislation would do anything
23 about.

24 And we are talking about an environment
25 in the last several years in which you've never seen

1 such an aggressive operation by law enforcement to
2 ferret out instances just like what we're talking
3 about here today, and they didn't come up with
4 anything.

5 I'm hearing examples today. I think
6 Mr. von Spakovsky even couldn't come up with anything
7 in Texas since the 1800s and a ballot box stuffing
8 case from 60 years ago. And there's just no evidence
9 of it. There is simply no evidence of polling place
10 fraud. Now, there are a lot of other problems in the
11 voting system that can alter the outcome of an
12 election. And I think it would be great if the
13 Legislature was discussing those issues here today,
14 but that's not what we're discussing. We're
15 discussing something that isn't a problem.

16 SEN. GALLEGOS: Let me ask you, another
17 issue that's being debated on the floor is financial
18 cost. And I guess if you can explain to us, or just
19 let us know that if there -- what financial cost is
20 there to the state if it enacts -- let's say we enact
21 this bill today, I would like to know what financial
22 cost is on the voter ID and if there is any -- is this
23 a one-time cost or have you seen in other states that
24 the costs continue to rise or any -- not direct by the
25 bill being passed but any indirect costs?

1 MS. WANG: Yes. I mean, as I said, this
2 will be a recurring cost to the state. I can only
3 tell you what Georgia has had to go through in order
4 to make sure that the voters are educated and the poll
5 workers trained.

6 Before the election, the Secretary of
7 State sends a reminder letter to over 80,000 active
8 and inactive registered voters across the state who
9 might not have ID. They received informational
10 brochures and postcards leading up to the election.
11 They contacted hundreds of thousands of voters,
12 reminding them to bring the ID with them. They
13 advertised extensively on radio and on cable
14 television. They distributed information all over the
15 state and public facilities.

16 And, of course, they had to go through a
17 whole new separate type of training for elections
18 officials and poll workers who -- you know, frankly,
19 you're asking to be quasi-law enforcement authorities
20 in determining the validity of a government-issued
21 identification card. And all of that will have to be
22 done every single year, and that doesn't take into
23 account the cost of providing the so-called free ID.

24 SEN. GALLEGOS: So you're saying extra
25 costs?

1 MS. WANG: It's going to cost quite a
2 lot, and it's going to cost every year.

3 SEN. GALLEGOS: You couldn't give us a
4 figure, could you?

5 MS. WANG: It's several hundred thousand
6 dollars a year in Georgia, which it has been pointed
7 out is quite a smaller state than Texas is, so I would
8 have to guess -- and I would be totally guessing --
9 but at least a million dollars.

10 SEN. GALLEGOS: All right. Let me ask
11 you, Ms. Wang, how many cases of election fraud
12 brought by the United States Department of Justice
13 over the last let's say several years were of the type
14 that would have been addressed by voter ID?

15 MS. WANG: None.

16 SEN. GALLEGOS: None?

17 MS. WANG: None.

18 SEN. GALLEGOS: All right. Let me ask
19 you, are there laws on the books right now that allow
20 for prosecution of people who commit voter fraud, and
21 is there any proof of these laws that are not working?

22 MS. WANG: Well, you know, that's one of
23 the kind of astonishing things to me about all of
24 this. You know, you're asking us, or people who are
25 advocating for the ID are trying to persuade us that

1 someone would go into a polling place to affect one
2 vote, change one vote.

3 And basically if they're caught, which
4 given the enormous efforts that have gone on in this
5 state to catch people doing this, they may be -- risk
6 going to jail for up to ten years and a minimum of two
7 and a fine of \$10,000. I don't know what kind of
8 lunacy that would be, to risk spending ten years in
9 jail to change one vote at the polling place. So I
10 think that's quite an effective deterrent, and I think
11 it has been.

12 SEN. GALLEGOS: Okay. Ms. Wang, let me
13 ask you, do most states have a photo ID requirement?
14 And do the states that don't impose photo ID
15 requirements have huge fraud problems?

16 MS. WANG: Well, as I said, about half
17 the states have basically next to no identification
18 requirement, and that includes states like California,
19 and North Carolina. And, actually, while I have North
20 Carolina on my mind, just in sort of response to
21 things that have been said earlier, you know, the
22 state that had the highest increase, greatest increase
23 in turnout in the last election in 2008 was North
24 Carolina. And not only did they not impose a voter ID
25 requirement such as what you're discussing here today,

1 but they did initiate same-day registration, which is
2 a much more fruitful thing for you to be perhaps
3 discussing.

4 But, as I say, about half the states
5 don't have strict voter ID requirements. There are
6 seven states that require a photo ID. And in four of
7 those states, they allow a person to simply fill out
8 an affidavit if they don't have the ID, and they are
9 able to cast a regular ballot. And so we are talking
10 about a very small universe of states that feel it
11 necessary to put people through these hoops and
12 hurdles in order to exercise their right to vote.

13 SEN. GALLEGOS: Ms. Wang, let me ask
14 you, you heard the author of the bill say that we
15 could probably give free IDs when needed. If a
16 state -- let me ask: If a state provides a free ID to
17 everyone, would it really be free? And with a
18 follow-up, wasn't Indiana's ID free? And how did the
19 free ID work in that state?

20 MS. WANG: Well, it depends on what
21 you're going to ask people to do in order to get the
22 free ID. I take it that there are not plans to go
23 door-to-door to every household in the State of Texas
24 distributing identification cards to anyone who needs
25 one.

1 And so I imagine that people will have
2 to go to DMV during working hours. If they work on an
3 hourly wage job, that's probably difficult. If they
4 have small children, that's probably difficult. If
5 they have a job that relies on tips, that's probably
6 difficult.

7 And then they will have to present all
8 sorts of identification in order to get the
9 identification. I imagine, if this works anywhere
10 close to the program in Indiana, they will probably
11 have to present their birth certificate. And getting
12 a certified copy of your birth certificate costs \$22.
13 How that is not a cost, how that is not ultimately a
14 poll tax is really beyond me.

15 SEN. GALLEGOS: Well, I mean, I just
16 want to tell you that a lot of the process in this
17 giving a free voter ID, I mean, that was just told to
18 us. We really don't know how the process is going to
19 work on anybody asking you for a free photo ID.
20 That's not explained in the bill.

21 MS. WANG: I would actually make one
22 follow-up point to that, which is that even in the
23 Indiana law, someone who comes to the polls without ID
24 is allowed to cast a provisional ballot and return
25 within 10 days, either to present identification or

1 fill out an affidavit attesting to their indigency,
2 that they are too poor to have ID. There isn't even
3 that in this current bill, to allow for the
4 possibility that there are poor people in our
5 community who might not have the identification.

6 SEN. GALLEGOS: Let me ask you this:
7 Let's say I'm given a free ID and I go to the polls,
8 but I only speak Spanish, only, and the precinct
9 worker cannot speak Spanish. Even though I have been
10 given a free ID from the state, can that precinct --
11 under this bill, can that precinct judge, worker, deny
12 me the right and say, "I can't -- I don't understand
13 you. You're going to have to give me other forms of
14 ID"?

15 MS. WANG: Well, whether the law allows
16 it or not, as I've indicated, that's what, practically
17 speaking, happens all the time. What you find is, is
18 that blacks and Latinos are far more likely to be
19 asked by poll workers for identification, whether it
20 is required of them or not. That's just a reality,
21 and it's just a road that seems so unnecessary to go
22 down.

23 SEN. GALLEGOS: But as open-ended as
24 this bill is, that happens to me, in the example I
25 just gave you, and the ID was given to me by the

1 state. And they, you know, obviously took all the
2 data that they needed and knew I was a U.S. citizen
3 and everything. If I speak Spanish only and I'm
4 rejected at the polls, I'm rejected at the polls
5 because the poll worker does not speak Spanish, is
6 that a denial of my voting rights?

7 MS. WANG: Yes, of course.

8 SEN. GALLEGOS: Okay. Let me ask you
9 this: In states that have voter ID requirements, are
10 there any studies that have been done which show that
11 the ID requirements in those states have not been
12 applied even-handedly?

13 MS. WANG: Yes. As I said, there now
14 have been several studies done that look at thousands
15 and thousands of voters that show pretty dramatic
16 disparities between African-American voters and Latino
17 voters and white voters.

18 SEN. GALLEGOS: Let me ask this, if you
19 can explain to me and discuss the problems with
20 vesting thousands of election judges with the
21 authority to verify additional requirements?

22 MS. WANG: Yes. I mean, that is a huge
23 problem. You're leaving a lot of decisionmaking
24 authority with poll workers who are often,
25 unfortunately, not very well-trained to begin with or

1 often not terribly on the younger side, who will have
2 to be given tremendous training in order to even hope
3 that this will be applied in a consistent manner.

4 And, as I said, you're basically asking
5 them -- I mean, another scenario I envision is,
6 someone comes in with their government-issued photo ID
7 that was taken 10 years ago and maybe they've gotten a
8 little grayer or added a few pounds and don't look
9 exactly the same as they used to. And the poll worker
10 will say, "This isn't you." I don't know what happens
11 in that situation.

12 SEN. GALLEGOS: One last question,
13 Ms. Wang. Let me ask you, it's kind of like sort of
14 the question that you already answered, only can you
15 comment on the likelihood of election judges dealing
16 with African-Americans, Hispanic and aged Americans,
17 that they will ask for proof of their ID at a higher
18 rate than others?

19 MS. WANG: Yes. I mean, that's clearly
20 borne out by the surveys that have been done to date.
21 We've known this anecdotally for years. And I don't
22 want to presume any particular motivation or reason
23 for this. All I know is that as a practical matter,
24 that's what you see.

25 SEN. GALLEGOS: Ms. Wang, thank you very

1 much.

2 MS. WANG: Thank you.

3 SEN. DUNCAN: Sen. Lucio.

4 SEN. LUCIO: Thank you, Mr. President.

5 And I'll be brief.

6 I understand you spent several years
7 doing research and writing on election reform and the
8 voting rights issue. And you're a member of -- excuse
9 me. Your organization has got a membership in 36
10 state chapters. How extensive have your studies been
11 in Texas on voter ID? And, actually, what I really
12 want to know is, along the border of Texas, do you
13 have any information that would allow me to better
14 understand how this issue pertains to minorities or
15 Hispanics along the Texas-Mexico board and to that of
16 other states such as Indiana, Georgia, given the
17 cultural value as a way of life, et cetera, taking
18 into consideration how this would impact those that I
19 represent compared to an Hispanic, let's say, in
20 Indiana or Georgia?

21 MS. WANG: I have not looked at that,
22 and I think that that would be something that would be
23 very important for someone to analyze before passing
24 such a law and submitting it for pre-clearance.

25 SEN. LUCIO: I guess I can download a

1 lot of information on your website in terms --

2 MS. WANG: Sure.

3 SEN. LUCIO: -- of what you discuss here
4 this evening?

5 MS. WANG: Sure.

6 SEN. LUCIO: Thank you very much.

7 SEN. DUNCAN: Ms. Wang, we have a copy
8 of your written testimony exhibit which will be
9 submitted in the record as Exhibit 17, dated March 10,
10 2009.

11 (Exhibit No. 17 marked and admitted)

12 MS. WANG: Thank you very much.

13 SEN. DUNCAN: Thank you. You're
14 excused.

15 The next witness will be Cameron Quinn.
16 Sen. Fraser.

17 Ms. Quinn, you have 10 minutes.

18 **TESTIMONY BY CAMERON QUINN**

19 MS. QUINN: Thank you very much,
20 Senator. It's a pleasure to be here on behalf of the
21 Carter-Baker Commission on Federal Election Reform,
22 which was formed and issued a report in 2005. My name
23 is Cameron Quinn. I am, among other things, a former
24 chief state election official for the Commonwealth of
25 Virginia. In Virginia, that's the Secretary of the

1 State Board of Elections as opposed to the Secretary
2 of State.

3 I'm also a former Department of Justice
4 voting election official and spent three years as the
5 U.S. elections advisor for IFES, which is formally
6 known as the International Foundation For Election
7 Systems.

8 I'm here today on behalf of the
9 Commission, however, and I want to make sure that you
10 know a little bit about the Commission that issued the
11 study. In addition to President Carter and Secretary
12 Baker, there were two former Secretaries of State -- a
13 Republican and a Democrat -- a journalist, four former
14 members of Congress -- including two Democrats and two
15 Republicans: Reps. Molinari, Michel, Hamilton and
16 Sen. Daschle -- six academics, including the President
17 of Rice University, and five other people who were
18 either appointed or elected in the political process,
19 including your former Supreme Court Chief Justice, Tom
20 Phillips. In fact, Texas was very well represented.
21 There were four of the 21 members of the commission
22 who, in fact, were Texans.

23 The commission was formed, organized by
24 the American University Center for Democracy and
25 Election Management, and it was in association with

1 Rice University's Baker Institute for Public Policy
2 and the Carter Center. And the activities of the
3 Commission were supported by funding a research by the
4 Carnegie Corporation of New York, the Ford Foundation,
5 the Knight Foundation, the Omidyar Network and The Pew
6 Charitable Trusts.

7 There's been a lot of reference to the
8 report. I understand everyone is receiving a copy if
9 they didn't already have it. In the interest of time,
10 I'm not going to go through a lot of the details in
11 the report but will focus on the particular issue at
12 hand.

13 When the report was issued, there was a
14 letter at the front of it signed by President Carter
15 and Secretary Baker. It starts out, "Elections are
16 the heart of democracy."

17 "If elections are defective, the entire
18 democratic system is at risk.

19 "Americans are losing confidence in the
20 fairness of elections, and while we do not face a
21 crisis today, we need to address the problems of our
22 electoral system."

23 It goes on to say, "Benefitting from
24 Commission members with diverse perspectives, we have
25 proposed, for example, a formula for transcending the

1 sterile debate between integrity and access."

2 "We are recommending a photo ID system
3 for voters designed to increase registration with a
4 more affirmative and aggressive role for states in
5 finding new voters and providing free IDs for those
6 without driver's licenses. The formula we recommend
7 will result in both more integrity and more access."

8 "We present this report because we
9 believe the time for acting to improve our election
10 system is now."

11 I also want to read from one other
12 portion of the report that I think is really
13 fundamentally at stake here, and that is that the
14 commission, under its provisions related to voter
15 identification says, "While the Commission is divided
16 on the magnitude of voter fraud -- with some believing
17 the problem is widespread and others believing that it
18 is minor -- there is no doubt that it occurs. The
19 problem, however, is not the magnitude of the fraud.
20 In close or disputed elections, and there are many, a
21 small amount of fraud could make the margin of
22 difference. And second, the perception of possible
23 fraud contributes to low confidence in the system. A
24 good ID system could deter, detect, or eliminate
25 several potential avenues of fraud -- such as multiple

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1 voting or voting by individuals using the identities
2 of others or those who are deceased -- and thus it can
3 enhance confidence. We view the other concerns about
4 IDs -- that they could disenfranchise eligible voters,
5 have an adverse effect on minorities, or be used to
6 monitor behavior -- as serious and legitimate, and our
7 proposal below aims to address each concern."

8 There has already been reference to the
9 reliance on REAL ID. This was a portion of the report
10 recommendation. But it goes on to say, "Reliance on
11 REAL ID, however, is not enough."

12 "Where they will need identification for
13 voting, IDs should be easily available and issued free
14 of charge."

15 I can go into any number of things
16 related to the report. I know that there has been
17 reference to some of the other provisions. But
18 recognizing that time is short, I want to also
19 reference a letter to the editor that was written by
20 Andrew Young, the former Mayor of Atlanta, who had
21 spoken to the commission, actually not at a public
22 hearing but at a private dinner they had ahead of
23 time. And he wrote this in September of 2005.

24 "Why did I give conditional support to
25 the Commission on Federal Election Reform for its

1 recommendation of the required federal ID when I met
2 with members last month? First, because there is
3 already a photo ID requirement in federal law, the new
4 REAL ID requirement. Why not use it to improve the
5 voter registration and election administration?

6 "Second, any required photo ID must be
7 made widely available, easily accessible and free of
8 cost. A photo ID is a weapon against the bondages of
9 poverty. Low income neighborhoods have ubiquitous
10 predatory check-cashing centers which thrive because
11 other establishments won't cash checks without a
12 standard photo ID."

13 And finally, the Commission was rather
14 pleased at the time the Supreme Court issued the
15 Crawford vs. Marion County case, that, in fact, the
16 commission's work was recognized -- in fact, in a
17 dissent written by Justice Breyer, who writes toward
18 the end of his dissent, "Of course, the Carter-Baker
19 Report is not the Constitution of the United States.
20 But its findings are highly relevant to both
21 legislative and judicial determinations of the
22 reasonableness of a photo ID."

23 While Justice Breyer did not support the
24 Indiana voter ID law, he does seem to suggest that
25 trying to conform it with Carter-Baker's

1 recommendations would have been, in his opinion,
2 appropriate.

3 Mr. Chairman, I am delighted to answer
4 questions. But I think in the interest of time, I'll
5 stop there.

6 SEN. DUNCAN: Thank you, Ms. Quinn.

7 Sen. Ellis?

8 SEN. ELLIS: Thank you, Mr. President.

9 **QUESTIONS FROM SENATE FLOOR**

10 SEN. ELLIS: Thank you, Ms. Quinn, for
11 coming.

12 What position did you play with the
13 Baker-Carter Commission, or Carter-Baker Commission?
14 What was your role?

15 MS. QUINN: My title was an Academic
16 Advisor. I was not on the commission, but I was one
17 of a host of people, including some of the people here
18 today, who helped advise the commission.

19 SEN. ELLIS: Do you have any idea how
20 many academic advisors they had?

21 MS. QUINN: It was somewhere in the
22 range of a couple of dozen. There is a list at the
23 end of the report. And I can't say that I've
24 memorized the list or counted them today.

25 SEN. ELLIS: I was told maybe somewhat

1 in the neighborhood of 100. Do you know?

2 MS. QUINN: If there were, I never saw a
3 list that was that long, but that doesn't mean that's
4 not the case.

5 SEN. ELLIS: Okay. And what is your
6 position now? What do you do now?

7 MS. QUINN: Currently, sir, I'm an
8 independent consultant.

9 SEN. ELLIS: You are a consultant?

10 MS. QUINN: Yes. sir.

11 SEN. ELLIS: And who are some of your
12 clients?

13 MS. QUINN: Well, at the moment I am
14 working with the Republican Lawyers.

15 SEN. ELLIS: I couldn't hear you.

16 MS. QUINN: The Republican lawyers.

17 SEN. ELLIS: Republican lawyers.

18 MS. QUINN: The Republican National
19 Lawyers Association.

20 SEN. ELLIS: That's a good group.

21 MS. QUINN: It is a good group. They
22 fight very hard --

23 SEN. ELLIS: They didn't give me an
24 interview when I got out of law school.

25 MS. QUINN: Did they?

1 SEN. ELLIS: But it's a good group.

2 And in your capacity here today --

3 MS. QUINN: Yes, sir.

4 SEN. ELLIS: -- are you representing the
5 Carter-Baker Commission or are you just testifying
6 from the vantage point of someone?

7 MS. QUINN: No, sir. I am here and was
8 requested by Secretary Baker's staff to be here on
9 behalf of the Carter-Baker Commission.

10 SEN. ELLIS: Okay. You heard my
11 discussion earlier, and you made reference to the
12 totality of the recommendations in the report --

13 MS. QUINN: Yes.

14 SEN. ELLIS: -- 86 or 87, somewhere in
15 that neighborhood.

16 MS. QUINN: I believe it was 87. I will
17 say that I did not go back to double check today.

18 SEN. ELLIS: That's okay. What would
19 you characterize as the major recommendations in the
20 report? Obviously, voter ID has gotten the attention
21 of a number of states for some reason.

22 MS. QUINN: Well, let me say that the
23 Executive Summary nicely summarizes them. And they
24 propose a voter registration system in which the
25 states, not the localities, are responsible for the

1 accuracy and quality of the voter lists, and other
2 ways to improve voter registration. They propose the
3 voter ID requirements.

4 SEN. ELLIS: The REAL ID Act?

5 MS. QUINN: The REAL ID Act.

6 SEN. ELLIS: You heard the discussion,
7 maybe heard the discussion between Sen. Fraser and me
8 a bit earlier in which he quoted an opinion editorial
9 and I quoted one. Now, I tried, to the best of my
10 ability, to be balanced, because I made reference to
11 the section in which they said both Republicans and
12 Democrats were at fault or something to the effect, if
13 I can paraphrase it, that Republicans were pulling out
14 the ID provision. Based on the comment, I took it to
15 mean because they felt it would give them an electoral
16 advantage. And it said Democrats were criticizing the
17 voter ID provision and not making the case to go and
18 do all of the other things, I assume making reference
19 to the REAL ID provision. Was that a fair
20 characterization of what they were saying in that
21 opinion editorial?

22 MS. QUINN: I think it is fair to say
23 that for some reason, election reform tends to divide
24 Republicans and Democrats, probably because they
25 recognize it may have an effect on their elections,

1 and that generally speaking, Democrats seem to be more
2 concerned about access and Republicans more concerned
3 about integrity. But I would say to you that it's my
4 impression, from talking to many Democrats and
5 Republicans, both elected and election officials, that
6 they all agree that both are important.

7 SEN. ELLIS: Well, from your vantage
8 point as an advisor, or one of the academic advisors
9 to the commission, would it be fair to say that you --
10 not the commission -- you would have some concerns
11 about whether or not there would be a disproportionate
12 impact on certain groups if you don't adopt more than
13 the voter identification provision? REAL ID provision
14 in the major one that both President Carter and
15 Secretary Baker made reference to in that editorial.
16 Do you have any concerns about a state just adopting
17 the voter ID provision and that concern being whether
18 or not it would have a disproportionate impact on
19 certain groups, whatever they are, people who have --
20 students from abroad, any concerns on your part about
21 a disproportionate impact on certain groups?

22 MS. QUINN: Senator, I would say that I
23 always, when I was an election official, was concerned
24 about trying to make sure that we enfranchised as many
25 voters as possible. And I understand that you're

1 asking me about this particular bill, but I think it
2 needs to be looked at in totality of other Texas
3 election law and procedure. And I do believe that
4 Texas has a number of other -- of these provisions. I
5 know, for example, that under the Help America Vote
6 Act, they already have adopted a statewide system.
7 Now, I can't recall the details of their statewide
8 system, and there may be some issues with it, but I
9 know that they've already adopted provisional
10 balloting. That's also required by the Help America
11 Vote Act.

12 SEN. ELLIS: Well, the reason I'm asking
13 you the question that I asked is because you are here,
14 and it says Academic Advisor, Carter-Baker Commission.

15 MS. QUINN: Yes, sir.

16 SEN. WHITMIRE: So I'm assuming that
17 Secretary Baker didn't ask you to just come here for
18 the weather in Texas.

19 MS. QUINN: No, sir!

20 SEN. ELLIS: So it would give the
21 impression somehow that you are endorsing or you are
22 for just having Texas adopt the Voter ID Act. I mean,
23 that would be the impression that a reasonable member
24 of this body would get.

25 So I'm asking you, since you say

1 Secretary Baker asked you to come, to comment on the
2 opinion editorial that I could give you again to look
3 at in which he and President Carter said they were
4 concerned that a voter ID bill by itself would have a
5 disproportionate impact on certain groups and that
6 states ought to adopt the REAL ID Act, and there are
7 other recommendations. They were concerned, based on
8 that opinion editorial -- I think you heard me read it
9 earlier -- about just picking out one piece.

10 MS. QUINN: I agree that that's the
11 case. They are concerned that people focus on only
12 one or two of the requirements.

13 SEN. ELLIS: Any guess why people maybe
14 in the Lone Star State -- I know maybe you don't come
15 here that often -- would just pick this part, the
16 voter ID part?

17 MS. QUINN: Sir, it is my understanding
18 that this state has not only picked that, that there
19 are other provisions from the Carter-Baker Report That
20 have been addressed by the state. I don't know most
21 of them, because I'm not someone who is frequently in
22 Texas. The longest time I spent in Texas was five
23 weeks once when I was summer-clerking. So I can't say
24 that I know Texas law or Texas procedure, but I do
25 know certain things that they have adopted that are

1 part of the report.

2 SEN. ELLIS: And what are those?

3 MS. QUINN: Well, as I said, I know that
4 you-all have some form of provisional balloting. I
5 know that you-all have some kind of statewide voter
6 registration database. I don't know the particulars,
7 but I do know that those are in effect.

8 SEN. ELLIS: Enjoy your stay in Texas.
9 Thank you very much.

10 MS. QUINN: Thank you, sir.

11 SEN. DUNCAN: We have from Ms. Quinn an
12 exhibit that I think is entitled "Building Confidence
13 in U.S. Elections," and I believe it is the Carter-
14 Baker Commission Report. Is that correct?

15 You need to say that into the --

16 MS. QUINN: Yes, sir.

17 SEN. DUNCAN: All right. We will submit
18 that in the record as Exhibit 18.

19 (Exhibit No. 18 marked and admitted)

20 SEN. DUNCAN: Sen. Fraser.

21 SEN. FRASER: Cameron, thank you for
22 being here today. We're honored to have you with us.
23 I was actually sitting, listening to your conversation
24 with Sen. Ellis. And you said one thing that I want
25 to make sure that we give, you know, an "attaboy" to,

1 because it's something that -- the message that I
2 continue trying to project is the fact that your goal
3 at the Commission was to enfranchise as many voters as
4 possible. And I think that is my goal by the
5 legislation I'm laying out, that I'm hoping by the
6 bill that I am laying out that we will encourage
7 people that have been discouraged in the past and give
8 them a reason to go back and vote.

9 MS. QUINN: Yes, sir.

10 SEN. FRASER: I really just have a
11 couple of questions I wanted to clarify. I'm looking
12 at the data that came back -- obviously, we had the
13 discussion about the editorials, and then I had the
14 Executive Summary of the report. But on the letters
15 from the co-chair that is signed by both President
16 Jimmy Carter and Secretary of State James Baker, right
17 in the middle of the letter the statement, "We are
18 recommending a photo ID system for voters designed to
19 increase registration with a more affirmative and
20 aggressive role for states in finding new voters and
21 providing free IDs for those without driver's
22 licenses."

23 I believe I heard you say, and it
24 appears that has been somewhat of a theme, is that,
25 obviously, the totality of the entire report,

1 everybody would like to get all of that put together.
2 But as we do in legislation, we don't get everything
3 we want. We take what we can get, put the small
4 pieces together, put some of the bricks in place and
5 hope we keep stacking them up. I'm assuming that was
6 what you're saying, based on the fact that we're only
7 addressing a photo ID bill today, that it was the goal
8 of the commission?

9 MS. QUINN: Yes, sir. My understanding
10 is that, as I've said, Texas has certain pieces of
11 this already in place. This is another piece of it
12 that Texas is trying to put in place.

13 SEN. FRASER: And I would add to that,
14 in the Executive Summary, you know, they had multiple
15 things, then a first, second and third. The second
16 thing that is listed in the Executive Summary is to
17 make sure that a person arriving at the polling site
18 is the same one who is named on the list. And of the
19 common things or the things that I continues to try to
20 emphasize today, that's what this bill is all about.

21 My goal is that when someone walks in
22 and represents them to be, you know, Tom Jones, I want
23 them to make sure that is really Tom Jones and they
24 have some way of verifying it. I believe, by reading
25 what you're saying, that was the intent of the REAL ID

1 and the fact that y'all are trying to -- based on what
2 you say, you want to make sure that the person
3 arriving at the polling site is the same one who is
4 named on the list. Is that --

5 MS. QUINN: That's certainly one of
6 those points. I think the other important point is
7 that the perception that such kinds of things cannot
8 occur is also important. And I have read before the
9 quote from Page 18 of the report: "While the
10 Commission is divided on the magnitude of other
11 fraud . . . there is no doubt that it occurs. The
12 problem, however, is not the magnitude of the fraud.
13 In close or disputed elections, and there are many, a
14 small amount of fraud could make the margin of
15 difference. And . . . the perception of possible
16 fraud contributes to low confidence in the system."

17 SEN. FRASER: In the research that the
18 commission did during the time the commission was in
19 place, did y'all get into the area of trying to look
20 at and identify that there was in-person voter fraud
21 either suspected or going on in the United States?

22 MS. QUINN: The report actually talks in
23 an earlier provision on Page 4 about some of the fraud
24 that they had found and talked about the Washington
25 State and Wisconsin elections in 2004. And

1 specifically says, "In Milwaukee, Wisconsin . . . more
2 than 100 people who voted twice" -- excuse me. I'm
3 taking this out of context.

4 In Milwaukee, Wisconsin, investigators
5 said they found clear evidence of fraud, including
6 more than . . . 100 people who voted twice, used fake
7 names or false addresses, or voted in the name of a
8 dead person."

9 SEN. FRASER: Now, these were in-person
10 votes?

11 MS. QUINN: Well, as far as I can tell,
12 that's the case. You know, this has been a few years,
13 and I don't recall all the details behind the report
14 they cited, and I had not brought that with me to
15 check today. I would be more than happy to check it
16 and get back to you.

17 SEN. FRASER: Thank you very much.
18 Thank you for being here today.

19 MS. QUINN: It's my pleasure.

20 SEN. DUNCAN: Sen. Van de Putte.

21 SEN. VAN de PUTTE: Thank you,
22 Mr. President.

23 Thank you very much for coming to appear
24 today. And if you saw me going like this
25 (indicating), it's because you have a really nice soft

1 voice, but I was straining on this side. So I wanted
2 to ask for some clarification.

3 I really had heard about the
4 commission's work and the validity of the report, and
5 they made several recommendations. First of all, I
6 think the recommendation concluded that we needed to
7 have a REAL ID to possibly use for voting purposes.
8 Is that not correct?

9 MS. QUINN: They recommended that that
10 was a very good choice to use, yes.

11 SEN. VAN de PUTTE: And I'm looking at
12 the report here on Page 19 that said, "For the next
13 two federal elections, until January 1, 2010, in
14 states that require voters to present ID at the polls,
15 voters who fail to do so should nonetheless be allowed
16 to cast a provisional ballot, and their ballot would
17 count if their signature is verified. After the REAL
18 ID is phased in," and they think it's -- according to
19 this report, it was supposed to have been phased in in
20 January of 2010 -- that "voters without a valid photo
21 ID, meaning a REAL ID or an EAC-template ID, could
22 cast a provisional ballot, but they would have to
23 return" in 48 hours to present something. Was that
24 the recommendation?

25 MS. QUINN: That's certainly covered on

1 Page 19 of the report, yes, ma'am.

2 SEN. VAN de PUTTE: My question is, in
3 all of this, was there ever any work done to account
4 for the number of naturalized citizens that would be
5 participating that would not have the type of
6 documentation that would be required?

7 MS. QUINN: I'm not aware of such
8 information. That doesn't mean it's not here. And
9 again, I would be happy to look into that and get back
10 to you.

11 SEN. VAN de PUTTE: Was there ever any
12 work done before the commission recommendations
13 about -- because it talked about in particular
14 African- American voters -- but the access to get an
15 ID for Hispanic voters?

16 MS. QUINN: Again, ma'am, I do not
17 recall any such thing, but I would be happy to check
18 into it and get back to you.

19 SEN. VAN de PUTTE: However, the report
20 did note that the priority population gender-wise who
21 did not have photo ID was women. Is that not correct,
22 as affirmed in the report?

23 MS. QUINN: They were concerned about
24 any population that would have trouble getting voter
25 identification, and that's why they suggested that it

1 should be free and that states should affirmatively
2 try to make sure they're reaching out to populations
3 that would be less likely to have identification.

4 SEN. VAN de PUTTE: And identifies in
5 the commission report the No. 1 population that lacks
6 a photo ID as women?

7 MS. QUINN: Correct.

8 SEN. VAN de PUTTE: Yes.

9 MS. QUINN: I'm relying on the fact that
10 you think there is a place in here where it says that.
11 I do not specifically recall it. But I'm happy to
12 agree with you, that they were concerned about all
13 populations.

14 SEN. VAN de PUTTE: I wanted to ask you,
15 the commission's report also asked that states use a
16 unique identifier. Can you quantify for us, with
17 regard to photo IDs, what is a unique identifier?

18 MS. QUINN: I think the reference to
19 unique identifiers was talking about a number, a
20 unique number identifier. I will say, however, that
21 photographs are, in their own way, a unique
22 identifier.

23 SEN. VAN de PUTTE: Well, I think,
24 according to the commission, the unique identifier has
25 to be a number. In the case of the REAL ID, that

1 number is dictated to be your social security number.

2 MS. QUINN: Yes.

3 SEN. VAN de PUTTE: Other states have
4 chosen the route of privacy and not having identify
5 some sort of numbering system that they have. But, of
6 course, as we know with the rulemaking currently
7 having gone forward on REAL ID, that is a social
8 security. My question is, on the unique identifier
9 that's a social security number and with the photo ID,
10 was there ever any work done when naturalized
11 citizens' names do not correspond to the identifier?

12 MS. QUINN: Not that I'm aware of, but
13 I'm happy to check into that and get back to you.

14 SEN. VAN de PUTTE: And the reason I ask
15 you is, for naturalized citizens, particularly those
16 coming from Spanish speaking counties, the mother's
17 maiden name is the last name.

18 MS. QUINN: Yes, I know.

19 SEN. VAN de PUTTE: So the father's name
20 is actually in the middle name. So when you're a
21 naturalized citizen, your papers or your identifier, I
22 would have been listed as Leticia San Miguel Aguilar,
23 even though Aguilar, my mother's maiden name, not part
24 of any identification or any papers that I would have
25 here; and, yet, the unique identifier would be a

1 social security.

2 For our naturalized citizens, which last
3 year were 53,000 in this state -- the biggest increase
4 that we've ever had -- the identifier would not match
5 up with the name, because in Spanish surnamed
6 individuals, the mother's maiden name goes last.

7 Was there any work done, to your
8 knowledge, at the commission or any work that you know
9 of to note that this would be a very different type of
10 discrimination to be able to prove up simply because
11 the cultural norm is one which the mother's maiden
12 name is last?

13 MS. QUINN: Again, Senator, not that I'm
14 aware of, but I would be happy to check into it.

15 SEN. VAN de PUTTE: Thank you. The last
16 question that I have is, since in Texas -- you do know
17 our demographics?

18 MS. QUINN: Not particularly well,
19 ma'am. I would be happy, if you want to refresh my
20 recollection.

21 SEN. VAN de PUTTE: Well, my work is
22 that I understand that in the commission there was a
23 former Atlanta mayor, Andrew Young on the commission.
24 Is that correct?

25 MS. QUINN: No, ma'am. He actually --

1 SEN. VAN de PUTTE: Was he an advisor?

2 MS. QUINN: No, ma'am. He appeared
3 before the commission at a private dinner and spoke
4 with them.

5 SEN. VAN de PUTTE: So the document that
6 you have on the commission and the recommendations on
7 the voter integrity, which commissioners were that,
8 that were Hispanic?

9 MS. QUINN: Hold on just one second, and
10 I will tell you those who seemed to have an Hispanic
11 surname. I cannot tell you necessarily that they are
12 the only commission members who are Hispanic.

13 What did I do with that? Here we go.

14 The only one who has an Hispanic
15 surname, and he was President of the National Council
16 of La Raza, is Raul -- Yzaguirre?

17 SEN. VAN de PUTTE: That's correct.

18 Thank you. I wanted to make sure that the
19 recommendations fit, because there's very little in
20 the commission. And part of our job here is to make
21 sure that whatever we enact doesn't unduly burden.
22 And most of the work cited has been done using
23 African-American and not Hispanic populations, given
24 that the states that have enacted these types of laws
25 have not had a significant amount of Hispanics. So I

1 appreciate that and hope that your visit here
2 continues to be fun for you.

3 MS. QUINN: Thank you very much.

4 SEN. VAN de PUTTE: Thanks.

5 SEN. DUNCAN: Sen. Williams.

6 SEN. WILLIAMS: Thank you, Mr. Chairman.

7 And, Ms. Quinn, thank you for joining us
8 today. I'm sorry for the late hour. I would like to
9 direct the committee's attention to the report.
10 You've made several references to different portions
11 of it. But on Page 69 of the report where the
12 conclusions are drawn, if you would join me there.

13 And I would ask the committee to direct
14 their attention to Page 69. And they refer to here --
15 really, we've heard about 87 recommendations in all
16 this. There's really five pillars, as they refer to
17 them here, five main themes that run throughout this
18 entire report about the recommendation, and I would
19 like to visit with you about those a little bit.

20 They say in the first one, ". . . we
21 propose a universal, state-based, top-down,
22 interactive, and interoperable registration list that
23 [will], if implemented successfully, [will] eliminate
24 the vast majority of complaints currently leveled
25 against the election system."

1 Now, that is very lofty language and
2 lofty goals that we have here. But I believe -- my
3 recollection -- I've served on the State Affairs
4 Committee here which considers election-related
5 legislation. And my recollection is that the HAVA
6 legislation that we considered there, the Help America
7 Vote Act, which we were required to implement and
8 phase in over a couple of election cycles, is what
9 addressed this concern.

10 We refer to it in Texas as the TEAM
11 project over at the Secretary of State's office. So
12 is that what you were making reference to? You were
13 making a more broad reference. I'm trying to get a
14 little more specific here.

15 MS. QUINN: Yes, Senator. When you
16 mentioned TEAM, I remembered that Ann McGeehan, when
17 she would come to the elections meetings would talk
18 about TEAM.

19 SEN. WILLIAMS: Okay. And then secondly
20 is the issue about photo ID. And, of course, that's
21 what we're debating here with 362. And, of course,
22 we're still struggling with the implementation of the
23 REAL ID Act, as many states are, but we're making
24 progress toward that.

25 And then third and finally -- or not

1 third and finally -- but thirdly, they say they would
2 propose measures that would increase voting
3 participation by connecting registration and the ID
4 process. Now, I don't know that we've implemented
5 anything new since the Carter-Baker Report came out.
6 But would this include -- you know, we have here in
7 Texas a couple of weeks of early voting where you can
8 go and -- convenience voting it's often referred to.

9 So the election really doesn't happen on
10 one day; it happens over a couple of weeks. And
11 typically, what happens, it will start on a Monday, it
12 will include a weekend voting time. And then
13 convenience voting will often conclude on the Friday
14 before the election following on Tuesday. Would that
15 be the sort of thing that they're referring to here,
16 to make it more convenient for people to vote? I
17 mean, that's not something new that we've done, but
18 we've had that here for a long time.

19 MS. QUINN: Well, I believe that would
20 be one of the kinds of things they were referring to.
21 There's a fairly significant number of them.

22 I think also you-all have a witness
23 coming from Houston who will be talking about the
24 electronic votes that I think they are experimenting
25 with. That certainly is the same kind of thing --

1 SEN. WILLIAMS: Right.

2 MS. QUINN: -- that ties voter
3 registration and identification and is intended to
4 make things easier.

5 SEN. WILLIAMS: Right. What I was going
6 to say here, we have so many people now in our state
7 registered to vote when they get their driver's -- if
8 they have a change of address, and that's something
9 that we actually implemented when the motor voter laws
10 came into effect back in the mid-nineties sometime.

11 MS. QUINN: Yes.

12 SEN. WILLIAMS: So those are the kinds
13 of things that we're referring to here, I think. And
14 I just want to make sure that -- and then the fourth
15 thing is this component -- I would refer to it as an
16 educational component, and that is to help voters
17 become more aware of voting and what they need to do
18 and what's involved in all that.

19 And so we have -- the Secretary of
20 State's office -- and I don't pretend that I would be
21 an expert on it -- but our Vote Texas Project that
22 worked through the Secretary of State's office was a
23 HAVA-compliant voter education project. Was that
24 commonly done when HAVA was enacted, to try to move
25 these things forward?

1 MS. QUINN: A lot of states, after the
2 passage of HAVA, used some of their HAVA funds to, in
3 fact, increase voter communications and voter
4 education, because in many cases -- and I know it's
5 certainly true in Virginia -- at the state level, I
6 have not only zero budget for voter education, but it
7 was not considered to be part of my mandate as a state
8 official prior to HAVA.

9 SEN. WILLIAMS: Right. And then their
10 final recommendation was the restructuring of the
11 system by which elections have been administered in
12 our country. They propose the Election Assistance
13 Commission and so forth. I'm not sure what all this
14 means. I would have to dig into the report. It
15 sounds pretty dramatic. But would this include things
16 like electronic voting or is that really more in the
17 stuff -- I know we have a lot of educational
18 components in my area related to electronic voting.
19 They make sure -- you know, they put these electronic
20 voting machines in supermarkets and libraries and
21 things like that, where people can try them out before
22 election day gets here. Is this referring to that or
23 is it a more sweeping change?

24 MS. QUINN: Well, what they had in mind
25 was the concern that was expressed in 2000 with

1 Catherine Harris and at other times with other
2 election officials who often are, or have been in the
3 past, sharers of a candidate's committee that was
4 running on the ballot.

5 SEN. WILLIAMS: Yes.

6 MS. QUINN: That varies across the
7 states. In Virginia, for example, while I was not
8 legally mandated not to, it was understood and it was
9 tradition and it was always done in Virginia, that no
10 election official at the State Board of Elections
11 would be involved in any ballot on the ticket, from
12 president down to the lowest ballot on -- or the
13 lowest item on any ballot in the state.

14 SEN. WILLIAMS: Right.

15 MS. QUINN: So I would not, for example,
16 ever contribute money to any race that was in the
17 state. I would not be involved as a volunteer. I
18 would not be involved certainly in any official
19 capacity. And I think that's the kinds of things that
20 they were getting at, was that election officials,
21 while operating as election officials, should stay out
22 of the partisan political fray, to the extent that
23 they were not themselves on a ticket. Can I --

24 SEN. WILLIAMS: So, for instance, in a
25 county like where I live, in Montgomery County, we

1 have an election administrator who doesn't run for
2 office, and it's a non-partisan position. She's hired
3 by the Commissioners Court or what other places will
4 call the Board of Supervisors that administers the
5 elections in our county. So that's the sort of thing
6 that you're talking about?

7 MS. QUINN: Yes, sir. I love to tell
8 this. I had a deputy when I was at the state board
9 who had a phrase I loved. She says, "When I get here
10 in the morning, I park my donkeys at the door."

11 SEN. WILLIAMS: There you go. So I
12 guess then in summary, as I look over this -- because
13 it had been asserted by Sen. Ellis earlier that really
14 we were kind of just picking this one requirement out
15 of the report. It would seem to me that out of the
16 five areas that they have, Texas has actually recently
17 made very substantial progress on at least four of
18 those things and maybe some progress on that fifth.
19 I'm not really sure what that fifth one means. It
20 seems like it's pretty -- you could pretty broadly
21 define and put a lot of things in that category.

22 So thank you again so much. Would you
23 agree with my conclusion there, that it's not really
24 fair to say that there's only one thing that we're
25 doing out of this, we've actually made substantial

1 progress? And I'm sure that that will help jog --
2 since Sen. Ellis and I served on that State Affairs
3 Committee together, I'm sure that will help jog his
4 memory about some of the good work we've done together
5 there. As I recall, all of these measures passed out
6 of the committee without any opposition and passed --
7 my recollection is that they passed this body with a
8 31 to nothing vote. So thank you very much.

9 MS. QUINN: Thank you, Senator.

10 SEN. DUNCAN: Thank you, Sen. Williams.

11 Ms. Quinn, there are no other senators
12 queued up, so you are excused. Thank you for your
13 testimony.

14 MS. QUINN: Thank you, sir.

15 SEN. DUNCAN: Sen. Wentworth.

16 SEN. WENTWORTH: Mr. President, I offer
17 as exhibit -- and the appropriate number, I think 18
18 or 19 -- letters --

19 SEN. DUNCAN: Hold on a minute. Let's
20 get the correct number so that it will be identified
21 in the record.

22 The next number is 19, so what you're
23 discussing will be Exhibit 19.

24 SEN. WENTWORTH: Yes, sir, letters
25 involving the Federal Election Commission that was

1 discussed by a previous witness.

2 SEN. DUNCAN: Well, okay. Bring it
3 forward.

4 Okay. Exhibit 19 is a letter from the
5 letterhead, dated June 29, 2007, to the Honorable
6 Dianne Feinstein and the Honorable Robert Bennett.
7 And it is -- I think the letter is signed by --

8 SEN. WEST: Mr. President --

9 SEN. WENTWORTH: Signature is shown on
10 Page 18, Hans A. von Spakovsky.

11 SEN. DUNCAN: Hans von Spakovsky.

12 SEN. WENTWORTH: And in addition,
13 Mr. President, there were letters also recommending
14 his appointment to the Federal Election Commission.

15 SEN. DUNCAN: All right. There are
16 several letters that are, I think, attached as
17 exhibits to the letter dated --

18 SEN. WENTWORTH: Yes, sir.

19 SEN. DUNCAN: -- June 29, 2007.

20 SEN. WENTWORTH: Actually, there are a
21 couple of attachments to that, and then there are
22 other separate letters of recommendation to the
23 Federal Election Commission.

24 SEN. DUNCAN: Okay. So those would be
25 separate letters, not attached to 19?

1 SEN. WENTWORTH: Yes, sir. There are 14
2 such separate letters.

3 SEN. DUNCAN: So you're going to present
4 all of those letters as one exhibit, Exhibit 19?

5 SEN. WENTWORTH: Yes, sir; yes, sir.

6 SEN. DUNCAN: All right. It will be
7 received.

8 (Exhibit No. 19 marked and admitted)

9 SEN. DUNCAN: Sen. Gallegos.

10 SEN. GALLEGOS: Mr. Chairman, whatever
11 was just introduced by Sen. Wentworth, I would like to
12 see a copy of whatever was introduced.

13 SEN. WENTWORTH: Well, Mr. President, I
14 would like to see a copy of the other 18 exhibits that
15 have been submitted to the Secretary, without any of
16 us seeing any copies of them.

17 SEN. LUCIO: I would like.

18 SEN. GALLEGOS: I mean, you know, I just
19 don't know what was -- but if it's entered into the
20 record, I would like to see a copy of it.

21 SEN. WENTWORTH: I'll be glad to make a
22 copy for him, Mr. President.

23 SEN. DUNCAN: We'll make a copy for you,
24 Senator. We'll make copies for whomever wants one.
25 Of if everybody wants one, that will be fine.

1 SEN. WENTWORTH: That's fine with me.

2 SEN. DUNCAN: Sen. Shapleigh?

3 SEN. SHAPLEIGH: Mr. Chair,

4 Sen. Wentworth's offer of that letter has jogged my
5 memory. Here are letters from the Brennan Center
6 against Mr. Spakovsky, members, signed by one, two,
7 three, four, five, six, seven, eight, nine, ten,
8 eleven, twelve, thirteen, fourteen, fifteen --
9 seventeen members of Congress against his nomination,
10 letters from Common Cause against his nomination,
11 letters from the Civil Rights Committee -- Lawyers
12 Civil Rights Committee against his nomination --
13 letters by the Campaign for Legal Center and Common
14 Cause against his nomination and letters from the
15 members of the United States -- I'm sorry -- from the
16 Campaign Legal Center that I would like to include in
17 the record, to make it more complete, as Exhibit 19.

18 SEN. DUNCAN: Well, I think yours would
19 be a separate exhibit. Sen. Wentworth has offered up
20 an Exhibit 19, which would be admitted into the
21 record. And you are offering Exhibit No. 20, which
22 contain the letters that you have just described to
23 the body. Is that correct?

24 You'll need to say that on a mike,
25 please.

1 SEN. SHAPLEIGH: I would offer these
2 letters to make them a part of the record.

3 SEN. DUNCAN: All right. Thank you very
4 much. Bring them forward and well put them in the
5 record.

6 (Exhibit No. 20 marked and admitted)

7 SEN. WENTWORTH: Mr. Chairman?

8 SEN. DUNCAN: Sen. Wentworth.

9 SEN. WENTWORTH: Could I, since
10 Sen. Shapleigh has been more precise about the
11 letters, may I do the same for Exhibit 19?

12 SEN. DUNCAN: You have the floor.

13 SEN. WENTWORTH: One letter is co-signed
14 by six members of Congress, recommending his
15 nomination to the Federal Election Commission. We
16 have letters from the Secretary of State of Kentucky;
17 Secretary of State of Indiana; the County Clerk of
18 Harris County, Texas; the Chairman of the Forsyth
19 County Board of Elections in Georgia; Mr. P. K.
20 Brunelli with the Federal Voting Assistance Program of
21 the Department of Defense at the Pentagon; from
22 Mr. Wendron Close from the United Kingdom; from Tom
23 Lowe, Fulton County Commissioner in Georgia; Mr. Frank
24 Strickland, who is Chairman of the Board of Directors
25 of the Legal Services Corporation; United States

1 Senator Johnny Isakson; T. Rogers Wade, President of
2 the Georgia Public Policy Foundation; Wesley Kliner,
3 Vice Chairman of the United States Election Assistance
4 Commission Board of Advisors; and, finally, Ray
5 Martinez III, former Commissioner of the United States
6 Election Assistance Commission.

7 Thank you, Mr. Chairman.

8 SEN. DUNCAN: It will be submitted.

9 Record noted.

10 Members, our next witness is Dr. Toby
11 Moore. Will Mr. Moore step up.

12 And you have 10 minutes, Mr. Moore.

13 Thank you.

14 DR. MOORE: Thank you. And thank you to
15 the senators for the opportunity to speak to you
16 today.

17 SEN. DUNCAN: You need to state your
18 name, too, and who you are representing.

19 **TESTIMONY BY TOBY MOORE**

20 DR. MOORE: My name is Toby Moore, and
21 I'm a Project Director in Elections Research for the
22 Research Triangle Institute, a non-profit,
23 non-partisan research institute. I'm speaking on my
24 own behalf today.

25 Before joining RTI in 2007, I was a

1 project manager for the Carter-Baker Commission on
2 election reform at American University. From 2000 to
3 2006, I was the geographer of the voting section of
4 the Civil Rights Division of the U.S. Department of
5 Justice. My Ph.D. is from the University of Iowa in
6 geography, which makes me the first non-attorney
7 witness you've had. When we get to the questions, I
8 guess we'll find out if that's a help or a hindrance.

9 My experience is in election data. I'm
10 currently conducting the U.S. Election Assistance
11 Commission's 2008 Election Day Survey. In that
12 capacity, I've had the pleasure of working with Ann
13 McGeehan, Kim Thole and the very fine staff in the
14 Elections Division. I became involved in voter ID
15 research for the first time in 2005, as part of the
16 team that conducted the review of the 2005 Georgia ID
17 law for the Department of Justice.

18 Voter ID has obviously become a very
19 partisan issue and an emotional one for many people.
20 I think that my testimony today, I'll concentrate on
21 really two things that I think will be the most use
22 for the Senate. First, I wanted to provide as
23 objective a survey of the current research in the
24 field as I can. And second, based on my experience
25 working on Section 5 pre-clearance cases at the

1 Department of Justice, I discuss the substantial
2 challenges the state faces in trying to meet its
3 burden under the Voting Rights Act. I also would be
4 welcome to talk with you about the Carter-Baker
5 Commission and its recommendation, although in the
6 interest of time, I may leave that for the questions.

7 We should know more about the effects of
8 voter ID than we do. In many ways the research
9 community has failed policymakers by not producing
10 better findings. However, some recent studies have
11 come up that I think are finally providing us with an
12 initial picture of the group of people who don't have
13 voter ID and the demographics of that group. To begin
14 with, I think it is clear from public opinion surveys
15 that most Americans support requiring a photo ID in
16 order to vote.

17 There have been kind of three approaches
18 to trying to identify those without IDs and to
19 determine their demographics. The first approach has
20 been to try to match between data bases, between voter
21 registration databases and Department of Motor Vehicle
22 databases, for example. That has generally not proven
23 to be successful. Those databases are very difficult
24 to match between. There is some interesting
25 information to come out of those attempts. But in

1 general, I would encourage you to avoid any kind of
2 database matching to arrive at your information.

3 The second approach -- and we've heard
4 much about this today -- has been to look at the
5 impact on turnout. There are two ways to do that.
6 The first is to use very sophisticated statistical
7 modeling techniques to try to determine before and
8 after ID laws where there is a drop-off in voting.
9 The results have been across the board. Some studies
10 have found increases, some have found no change, and
11 some studies have found decreases, especially among
12 minority voters.

13 There is a forthcoming paper from
14 Lorraine Minnite and Robert Erickson that assesses
15 these attempts at modeling turnout changes. They
16 conclude that our tools and data are inadequate for
17 detecting any impact. I would encourage you to look
18 at that paper. We simply don't have good enough data
19 or statistical tools that would allow us to detect the
20 changes in turnout that could be traced to voter ID
21 laws. Even worse, though, are these blunt attempts to
22 use aggregate turnout to try to detect changes in
23 turnout that can be attributed to voter ID?

24 I think it's important to remember that
25 voter ID laws, whether you're in favor or opposed to

1 them, are designed to do one thing, and that's to
2 reduce voter turnout, if only among fraudulent voters.
3 That makes it impossible, to my mind, to be able to
4 interpret the results of these findings.

5 If turnout goes up after a voter ID law,
6 then why have you not been able to stop the fraudulent
7 votes and have that appear in the turnout? Basically
8 what happens, I think, is that voter turnout -- the
9 impact of voter ID is small enough that it's swamped
10 by other factors such as Obama running, such as
11 Georgia and Indiana being seen at battleground states
12 and presidential candidates putting resources in and
13 voters coming out. I mean, comparing Georgia and
14 Indiana, which we're seeing as competitive states to
15 Mississippi and Illinois, is the sort of facile
16 analysis that I just don't think holds up very well.
17 It's certainly not social science, and I don't think
18 it's even very good rhetoric.

19 On the issue of whether voter ID causes
20 turnout to increase by boosting confidence, I would
21 point you to a recent paper by Ansolabehere and
22 Persily who surveyed voters and found that perceptions
23 of voter fraud had no impact on turnout. It's an
24 interesting idea, but I know of no reliable
25 information that traces increased willingness to

1 participate to a belief in integrity in elections.

2 Finally, I think that the survey, the
3 research that's most useful is the survey research
4 that's come out, including one done by the Carter-
5 Baker Commission that I initiated in 2006. They found
6 that 1.2 percent of registered votes in three states
7 lacked IDs. This may seem like a small number. But
8 when applied to Texas in 2008, it would have meant
9 that approximately 162,901 registered voters would
10 have lacked a government-issued photo ID.

11 Because of the way the study was
12 designed, that is probably a floor, and there is
13 reason to think that the number could be substantially
14 higher in Texas. But I would think that the 162,000
15 number is a very defensible floor for the population
16 we're talking about.

17 More importantly, the Carter-Baker
18 sponsored study found that African-Americans were more
19 than four times more likely than whites to lack photo
20 ID. Women made up nearly all of those who did not
21 have photo ID. Nearly all of those who lacked ID were
22 Democrats. And 88 percent of those without photo ID
23 had a household income below \$25,000 a year.

24 Now, this was a survey of registered
25 voters. When your law goes before the Department of

1 Justice, they're also going to be considering its
2 impact on voters who are not registered but who are
3 eligible to vote. And there is reason to think that
4 that pool of voters is even more disproportionately
5 minority and maybe larger in proportion to their size
6 of people who lack ID.

7 Now, finally, as we all know, this is a
8 law that will have to go before the Voting Rights
9 Section, Civil Rights Division of the Department of
10 Justice to be cleared under the Voting Rights Act.
11 The state should not take comfort in the Supreme
12 Court's upholding of the Indiana voter ID law. As the
13 Bush Administration argued when federal courts blocked
14 the 2005 Georgia ID law that had been precleared, the
15 Section 5 analysis is distinct from the constitutional
16 analysis. The Section 5 review will be a comparison
17 of the current Texas law to the proposed law. The
18 state will be required to prove that its proposed law
19 does not deny or abridge the right to vote on account
20 of race, color or membership in a language minority
21 group. I expect that the Obama Justice Department
22 will put the burden on Texas to prove its case, unlike
23 the Bush Administration's handling of the 2005 Georgia
24 law.

25 Not knowing the effect of the law on

1 protected groups -- African-Americans, Hispanics,
2 language minority groups and others -- will be an
3 invitation to the Department of Justice to object on
4 the basis of the state having not met its statutory
5 burden.

6 Specifically, based on my experience in
7 the Georgia case and other Section 5 cases, I expect
8 DOJ at a minimum will look for:

9 First, evidence that Texas knows the
10 number and demographic make-up of eligible voters and
11 registered voters who lack the required ID;

12 Second, well-developed and well-funded
13 public education programs to make voters aware of the
14 new requirements, initiated well before the
15 implementation of the new law. Again, this is what
16 Georgia and Indiana did;

17 Revamped poll worker training to
18 emphasize the correct enforcement of the new, more
19 complicated ID requirements;

20 Well-developed and well-funded programs
21 to distribute the required IDs. I don't think, from
22 my reading of the current bill, that the provision for
23 free ID will be adequate;

24 Substantial evidence of the voter
25 impersonation problem that the law addresses;

1 And finally, a detailed discussion of
2 why less retrogressive alternatives, including use of
3 an affidavit fail-safe, were not adopted.

4 Texas faces a substantial cost on two
5 fronts: First, to develop and fund the necessary
6 supporting programs to fairly implement any law; and
7 second, to develop a convincing submission to what I
8 would expect to be a skeptical Civil Rights Division.

9 In the questions period, I would be glad
10 to talk about some of the information that I have on
11 the cost of these programs, on the specific
12 recommendation of the Carter-Baker Commission and on
13 some of the less retrogressive alternatives that Texas
14 might want to consider.

15 Thank you.

16 SEN. WENTWORTH: The Chair recognizes
17 Sen. Van de Putte.

18 SEN. VAN de PUTTE: Thank you,
19 Mr. Chairman.

20 **QUESTIONS FROM SENATE FLOOR**

21 SEN. VAN de PUTTE: Dr. Moore, thank you
22 for being here today. And there are a few things that
23 I would like to ask to make sure that I understand the
24 impact of your testimony.

25 I know that we've said that President

1 Jimmy Carter advocated for a photo ID as part of the
2 Carter-Baker Commission. Can you expand a little bit
3 on that? I know that part of your testimony just
4 touched on it. But what particular point are you
5 concerned about with regard to the recommendations in
6 the commission that have been part of the record that
7 we are going to put into the Committee of the Whole
8 and your observations as to the implications of such?

9 DR. MOORE: Thank you. Again, I was
10 Program Manager at American University and worked on
11 the follow-up work to trying to get the commission's
12 87 recommendations implemented. And to me, the ID
13 law -- and in our discussions, we worked with Congress
14 in 2006 during the debate on ID laws there and working
15 with members to understand what the Commission was
16 really trying to do.

17 And the commission really had a
18 two-pronged approach. The first was yes on voter ID,
19 but the second was to use the voter ID as a way of
20 expanding participation and expanding enfranchisement.
21 And it called for a very aggressive role on the part
22 of the states to take the lead in getting people
23 registered and in getting people the voter ID that
24 they would need under the new law.

25 And I think it's telling that the